Supreme Court, U. S.
FILED
JUL 19 1977
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

No. 77-114

OCTOBER TERM, 1977

WILLIAM J. QUIRK and LEON E. WEIN,
Appellants,

v.

MUNICIPAL ASSISTANCE CORPORATION for the City of New York and THE CITY OF NEW YORK,
Appellees.

On Appeal From The Court Of Appeals Of New York

JURISDICTIONAL STATEMENT

WILLIAM J. QUIRK
LEON E. WEIN
250 Joralemon Street
Brooklyn, New York 11201
Attorneys for Appellants

July , 1977

Dick Bailey Printers, 290 Richmond Ave., Steten Island, N.Y. 10302
Tel.: (212) 447-5358

TABLE OF CONTENTS

Page

Opinions Below 1

Jurisdiction 2

Questions Presented 3

Constitutional and Statutory Provisions Involved 4

Statement of the Case 4

How the Federal Questions Were Raised and Decided Below 19

The Federal Questions are Substantial 20

I. The judgment of the New York Court of Appeals presents the substantial question whether a State can set up a dummy corporation to deprive city bondholders of their security or whether such bondholders are protected by the Contract Clause of the United States Constitution 20

II. The existence and nature of a Contract within the Contract Clause is a matter for this Court to decide 23

III. It is of great importance to New York City bondholders that this Court restore constitutional principles within the State of New York 27

IV. The constitutional priority of City bonds must be upheld 30

V. The Court below failed to apply the precedent established by this Court 36

Conclusion 40

Appendix A

Decision of New York Court of Appeals A-1

Decision of New York Supreme Court A-4

Appendix B

Excerpts from New York City and New York State Statutes A-7

Appendix C

Notice of Appeal A-10

CASES CITED:

Coombes v. Getz, 285 U.S. 434 (1931) 24

Faitoute Iron & Steel Co. v. Asbury Park, 316 U.S. 502 (1942) 31

Flushing Nat. Bank v. MAC, 40 N.Y. 2d 731 (1976) ... 18

Gelpcke v. Dubuque, 68 U.S. (1 Wall) 175 (1865) 27

Jefferson Branch Bank v. Skelly, 1 Black 436 (1861) ... 25

Levy v. McClelan, 196 N.Y. 178 (1909) 6

Louisville Gas Co. v. Citizens Gas Co., 115 U.S. 683 (1885) 25

Louisville & Nashville R.R. Co. v. Palmer, 109 U.S. 244 (1883) 25

Meriwether v. Garrett, 102 U.S. 497 (1880) 33

Mount Pleasant v. Beckwith, 100 U.S. 514 (1879) 37

Norton v. Shelby County, 118 U.S. 425 (1886) 23

Port of Mobile v. Watson, 116 U.S. 289 (1885) 39

Quirk and Wein v. The Municipal Assistance Corporation for the City of New York and the City of New York, 41 N.Y. 2d 644 (1977) 1

Stearns v. Minnesota, 179 U.S. 223 (1900) 25

United States Trust Company of New York v. The State of New Jersey, et al. __ U.S. __ 97 S.Ct. 1505, 52 L.Ed.2d 92 (1977) 20

Van Derzee v. City of Long Beach, 265 App.Div. 1059 (2d Dept. 1943) 34

Von Hoffman v. Quincy, 4 Wall 535 (1866) 36

Williamsburgh Savings Bank v. State, 243 N.Y. 231 (1926) 9

Wein v. The City of New York, 36 N.Y. 2d 610 (1975) . 5

Wright v. Nagle, 101 U.S. 791 (1879) 25

CONSTITUTIONAL PROVISIONS AND STATUTES

Constitution of the United States—
Article I. Section 10. Clause 1 3

28 U.S.C. §1257(2) 2

Constitution of the State of New York—

Article VIII. Section 1 11

Article VIII. Section 2 2

Article VIII. Section 4 6

Article VIII. Section 5 7

Article VIII. Section 10 30

Article X. Section 5 9

New York Civil Practice Law and Rules. Section 3001 .

Ch. 875. Laws of New York of 1975 18

Ch. 874. Laws of New York of 1975 18

Ch. 870. Laws of New York of 1975 17

Ch. 869. Laws of New York of 1975 17

Ch. 868. Laws of New York of 1975 17

Ch. 169. Laws of New York of 1975 2

Ch. 168. Laws of New York of 1975 2

SECONDARY AUTHORITIES

Wall Street Journal

May 9. 1977 25
April 29. 1977 .....
August 11. 1976 29
28

New York Times
May 6. 1977 24
April 27. 1977 24
June 12. 1975 17
June 6. 1975 17

New York City Official Statement
Dated July 1. 1976 6
Dated May 20. 1977 19

New York State 1938 Constitutional Convention Report of the Committee on State Finances and Revenues, Cities, Counties and Towns and Villages, JOURNAL OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF NEW YORK. 1938. App. 3 Doc. No. 6 11

1938 CONSTITUTIONAL CONVENTION RECORD 10

REPORT OF THE CONSTITUTIONAL CONVENTION COMMISSION TO THE 1938 CONVENTION. TAXATION AND FINANCE ... 9

Hearings. Oversight on New York City Seasonal Financing Act to Committee on Banking. Housing and Urban Affairs. United States Senate. 94th Cong. 2d Sess. (April. 1976) 16

Hearings. Oversight on New York City Loan Program to Committee on Banking. Housing and Urban Affairs. United States Senate. 94th Cong. 2d Sess. (December. 1976) 16

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977
No.

WILLIAM J. QUIRK and LEON E. WEIN,
Appellants,

v.

MUNICIPAL ASSISTANCE CORPORATION FOR THE CITY OF NEW YORK AND THE CITY OF NEW YORK,
Appellees.

ON APPEAL FROM THE COURT OF APPEALS OF NEW YORK

JURISDICTIONAL STATEMENT

Appellants appeal from the judgment of the Court of Appeals of New York, entered on April 26, 1977, affirming the decision of the Supreme Court of New York, Kings County, Special Term, and submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial federal questions are presented.

OPINIONS BELOW

The decision and opinion of the Court of Appeals of New York is reported at 41 N.Y. 2d 644 (1977) but is set forth in Appendix A hereto at pages A1-A6. The decision and opinion of the Supreme Court of New York Special Term, Kings County 1977 is not reported but is set forth in Appendix A hereto at pages A4-A6.

JURISDICTION

Appellants initiated this action in the Supreme Court of New York, Kings County, pursuant to Section 3001 of the New York CPLR, seeking a declaration that Chapters 168 and 169 of the Laws of New York of 1975 contravened the Contract Clause of the United States Constitution. Chapters 168 and 169 diverted the New York City Sales Tax and Stock Transfer Tax from the general revenues of New York City, where they provided security for the full faith and credit bonds of the City of New York, to a newly created corporation, the Municipal Assistance Corporation for the City of New York. The Constitution of the State of New York specifically provides that a bondholder may secure a court order directing the Comptroller to "set apart from the first revenues thereafter received" a sufficient sum to pay interest and principal on City Bonds. N.Y. CONST. Art. VIII §2. Defendant MAC has issued $4.4 billion of purported securities in violation of the Federal Constitution. Between June 10, 1975 and June 30, 1976 MAC has received $644 million of Sales Tax revenues which lawfully provide security for City bonds. Present projections of MAC annual debt service show that $780 million will be needed in fiscal 1980. MAC PROSPECTUS of June 14, 1977 at F-11.

The Supreme Court of New York, Kings County entered an order on March 10, 1977 dismissing the Appellants' Complaint and declaring that Chapters 168 and 169 are constitutionally valid. Appellants appealed that decision directly to tne Court of Appeals of New York which, on April 26, 1977, affirmed the lower court's judgment, *per curiam*. The Notice of Appeal was timely filed in the Supreme Court of New York, Kings County on May 20, 1977.

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257 (2) this being an appeal from a final judgment

of the Court of Appeals of New York, the highest court of that State, holding that Chapters 168 and 169 of the 1975 Laws of New York are not repugnant as to Article I, Section 10, Clause 1, of the United States Constitution.

Questions Presented

1.

Is the New York legislation creating MAC and authorizing it to issue $4.4 billion dollars of purported securities without regard to the constitutional standards governing local government debt repugnant to Article 1, Section 10, Clause 1 of the United States Constitution on the ground that such legislation impaired an obligation of contract?

2.

Is the 1975 New York legislation repealing the New York City Sales Tax and renaming and reenacting it as the "New York State Sales Tax for the Benefit of New York City" and diverting it to the Municipal Assistance Corporation (MAC) repugnant to Article I, Section 10, Clause 1 of the United States Constitution on the ground that such legislation impaired an obligation of contract?

3.

Is the 1975 New York legislation creating MAC and diverting to it the New York City Stock Transfer Tax repugnant to Article I Section 10 Clause 1 of the United States Constitution on the ground that such legislation impaired an obligation of contract?

4.

Is the New York legislation creating MAC to fund operating deficits an impairment of New York City's contract with its bondholders which requires the City to operate within the confines of a balanced budget?

CONSTITUTIONAL and STATUTORY PROVISIONS INVOLVED

The Constitutional provision which Appellants contend has been violated by the diversion of City taxes to the newly created MAC is Article I, Section 10, Clause 1 of the United States Constitution, commonly known as the "Contract Clause," which provides in part as follows:

> "No State shall . . . pass any . . . Law impairing the obligation of Contracts . . ."

This case also involves 1975 New York Laws, chapters 168 and 169 which created MAC and the New York Constitution, Article VIII.

Statement of the Case

Appellants instituted this action on their own behalf as holders of the full faith and credit bonds of the City of New York. The action seeks declaratory judgment that chapters 168 and 169, which unilaterally deprive City bondholders of their security, violate the United States Constitution. The purchasers of New York City bonds relied upon the fiscal safeguards built into the 1938 State Constitution. Article VIII of the State Constitution specifies many bondholder protections. Bondholders have believed that only lawful debt could be issued. That is, that any debt issued on behalf of the City would comply with the State Constitution. However, none of the MAC debt meets the State constitutional standards. The State Constitution requires that long term debt may only be issued for capital projects. But MAC bonds may be issued to pay operating expenses. The State Constitution requires that short-term debt (one year notes) may only be issued in anticipation of taxes and revenues. But MAC may borrow in anticipation of a deficit. The legitimate expectations of the City bondholders, that any debt issued on behalf of the City would comply with the State Constitution, have been denied. The bondholders contend that this denial is an impermissible impairment of their contract in violation of the Federal Constitution.

The legal fiction purporting to justify MAC is that the State constitutional provisions only refer to cities; they do not refer to dummy corporations funded with taxes and borrowing on behalf of a city. Consequently, the dummy corporation is said to be free of all constitutional restraints. The Court of Appeals of New York so held below and in *Wein v. City of New York*, 36 N.Y. 2d 610 (1975) (Chief Judge Breitel and Judges Jasen and Jones dissenting). The City bondholders here contend that the creation of a dummy corporation, MAC, free of all state restraints, is an impairment of their contract under the Federal Constitution. The City bondholders contend that a term of their contract is that all debt issued on behalf of the City must comply with the State constitutional standards governing local finances. The State legislation creating MAC impairs the City bondholder's contract.

By means of MAC some $4.4 billion of invalid and unlawful debt has been issued. MAC has provided a vehicle for continued deficit financing by New York City. MAC was created for the sole function of borrowing money on behalf of the City of New York. MAC has no purpose, function or capacity other than the evasion of constitutional limitations.

The major bondholder safeguards, evaded by the

creation of MAC, and which evasion materially alters the risk of default for City bonds, may be noted as follows:

1. **City Debt Limit**—The New York Constitution, since 1884, has provided that no City could incur debt in excess of 10 percent of the value of its taxable real estate. N.Y. CONST. Art. VIII, §4. The purpose of this provision was to prevent the City "from improvidently contracting debts ... and to minimize the mischievous consequences to the taxpayers of extravagance in City expenditures." *Levy v. McClellan*, 196 N.Y. 178, 199, (1909). The City's own figures show a remaining debt margin within the general debt limit of $1,697,759,426. CITY OFFICIAL STATEMENT DATED JULY 1, 1976 as of DECEMBER 1, 1975. Plainly, the issuance of $4.4 billion of MAC bonds on behalf of the City puts the City approximately $2.7 billion over its debt limit. The debt limit, designed to prevent the City from incurring excessive debt, is consequently made meaningless by the legislative creation of MAC. The City bondholders had a legitimate expectation that the debt limit provision would be enforced. Instead, the provision has been evaded by the invention of a dummy corporation. The City bondholder's security has been impaired.

2. **City Can Only Borrow Long-term for Capital Projects**—The New York Constitution provides that the City can only issue its long-term debt, its bond, for capital projects. N.Y. CONST. Art. VIII §2. Day to day operating expenses must be paid from taxes or other revenues. A long-term borrowing was permissible only if the benefits would extend to future years. Of course, deficit financing was illegal. The provisions require a prudent system for City finances. However, the

State legislature, by the creation of MAC, has set up a dummy corporation to borrow for any purpose including the funding of a deficit. This disastrous fiscal approach endangers the City bondholder. Again, the bondholder had a legitimate expectation that the prohibition against deficit financing would be enforced not evaded. His security is impaired by the evasion.

3. **City Can Only Borrow Short-term in Anticipation of Revenues or Taxes**—The State Constitution provides that the City can only issue its short-term debt, other than bond anticipation notes, in anticipation of revenues and taxes due within one year. N.Y. CONST. Art. VIII §5. The short-term debt is junior to the City bonds. N.Y. CONST. Art. VIII §2. Short-term debt was thought to be fiscally prudent because of the requirement that it could be issued only in anticipation of real taxes or revenues. As long as that requirement was adhered to, the short-term debt could not be used to fund a deficit. The City bondholder, although senior to the noteholders, had the legitimate expectation that only lawful junior debt be issued. The State legislature, however, by the creation of MAC, authorized a dummy corporation to borrow on behalf of the City without respect to future revenues or taxes. The City bondholder's security is impaired by the legislative destruction of the limitations on City borrowing.

4. **Maximum Maturity**—The State Constitution limits the maturity of bonds to the probable useful life of the project. N.Y. CONST. Art. VIII §2. Further, in no event can the maturity extend beyond forty years. The fiscally sound premise of these provisions is that it is necessary to limit the

term of outstanding bonds to restrain interest cost. The State legislature, by the creation of MAC, has invented a dummy corporation which could issue 100 year bonds on behalf of the City. The City bondholders are entitled to have the term limitations enforced.

5. **Provision for Repayment**—The State Constitution requires that prompt provision be made for the repayment of principal. N.Y. CONST. Art. VIII §2. The City cannot borrow on an "interest only" basis. Its bonds must be either serial or backed by a sinking fund. Generally the first principal payment must be made within two years of the borrowing. Further, it is required that the principal payments be paid at an even rate. That is, payment must be made under a schedule in which no annual installment of principal is more than 50 percent greater than the smallest prior installment. The bondholder is protected by these prudent restraints on the borrowing power. The State legislature, by the creation of MAC, has invented a dummy corporation which could issue bonds on an "interest only" basis. The City bondholders are entitled to have the provision for the prompt repayment of principal enforced.

6. **City Pledge of Faith and Credit**—Since 1938, the Constitution has required that all City debt "shall have pledged its faith and credit". N.Y. CONST. Art. VIII §2. The provision was intended to prohibit limited liability obligations—such as those which would be issued by dummy corporation—where repayment was supposed to be restricted to a particular revenue source. Limited liability debt was considered unwise since the debt was incurred without full consideration because of the protection of the limitation. And yet, if trouble

came, as a practical matter, the limitation would not hold and the debt would have to be paid out of general taxes. The State constitutional requirement that the City pledge its faith and credit provides for clear and unequivocal commitments. The City's full resources stand behind the debt. The provision protects the bondholders since it prohibits the creation of dummy corporations funded with particular City taxes. The bondholders are entitled to enforcement of the provision prohibiting the creation of dummy corporations.

7. **Prohibition of City Liability on Public Corporation Bonds**—Article X, Section 5 of the State Constitution was added in 1938 to deal with the specific problem of "moral obligation" debt. In *Williamsburg Savings Bank v. State*, 243 N.Y. 231, (1926) the Court of Appeals held the State legally liable because of the "moral obligation" resulting from the creation of a River District although the bonds were issued without liability on the part of the State beyond specified assessments. The Court believed that the State was too involved to deny liability since the obligations "in essence and equity are its own". 243 N.Y. at 245-246. The decision raised the question whether behind "the authority stands, therefore, an implied liability of the government creating it." REPORT OF THE CONSTITUTIONAL CONVENTION COMMISSION TO THE 1938 CONVENTION, TAXATION & FINANCE at 356. The Convention thereafter determined that governmental debt and authority debt should be kept totally separate. The decision was made that the authority debtholders could have recourse only to their project. There was to be no implied governmental liability or bail-out

of the authority. The Convention voted after a speech by Delegate George Fearon.*

Following Mr. Fearon's speech the Convention adopted Article X Section 5 of the State Constitution which provides:

Neither the state nor any political subdivision thereof shall at any time be liable for the payment of any obligations issued by a public corporation heretofore or hereafter created, nor may the legislature accept, authorize acceptance or impose such liability upon the state or any political subdivision thereof.

Article X, Section 5 prohibits the creation of dummy corporations. Any public corporation

*Fearon stated

This comes right down to the question of whether or not you are going to protect the credit of the State, whether you are going to protect the credit of the municipal subdivisions of the State, or whether you are going to give these authorities an absolutely wide open hand and let them go out and spend money in any manner in which they please, issue bonds to any extent to which they can get those bond attorneys to pass them and these underwriting concerns to take them, because they are relying on the proposition that if the revenues of the enterprise are not sufficient to meet the interest and amortization, they can always go to the Legislature and ask for an enabling act and get the Legislature to say in effect that the full faith and credit of the State is in back of it.

I believe that when people buy these bonds they should know definitely and certainly that the credit of the State of New York and that the credit of the municipality is not behind those bonds. There should not be any question about it. That is the honest, fair, square way of doing business, and that is the kind of language that I understand. If they want to buy them under those circumstances, well and good, but let us not have them buy those bonds and then come back to the Legislature and say: "Well, there has been a precedent established in this State under the Williamsburg case. You did it in the Williamsburg case, and have got to do it for us. You have got to bail us out." It is not the fair, square, honest way of doing it.

1938 CONSTITUTIONAL CONVENTION RECORD AT 2276.

BEST COPY AVAILABLE

created must be able to stand on its own feet. Its debt cannot be supported, or paid, with tax funds. The City bondholders relied on Article X, Section 5 to bar the use of dummies. The provision prohibited the payment of City funds for authority debt. The State legislature, by constitution, was prohibited from imposing any such liability upon the City. Nonetheless, the State legislature, by the creation of MAC has directed that City tax revenues be funneled for the payment of dummy corporation debt. The MAC debt, which now purports to be a claim on the bondholders' revenues, could not exist if Article X, Section 5 had been obeyed. This material change in the bondholders risk is an impermissible impairment.

8. **Prohibition on Gift Or Loan of City Credit in Aid of a Public Corporation**—Since 1938 the Constitution has prohibited the gift or loan of City credit in aid of a public corporation. N.Y. CONST. Art. VIII §1. The Constitution permits a gift or loan of money on hand to a public corporation. However, a gift or loan of credit, the City's promise to pay, is prohibited. The 1938 draftsmen, in forbidding the use of local government credit in aid of a public corporation, stated:

The committees feel that it is essential to prevent any impairment of local credit on which the solvency and, indeed, the whole financial structure of our local governments are founded.

Report of the Committees on State Finances and Revenues, Cities, Counties and Towns, and Villages, JOURNAL OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF NEW YORK 1938, App. 3, Doc. No. 6 at 2.

In substance, of course, the City's credit, its tax revenues, are the only thing behind MAC bonds. Certainly it cannot be denied that New York City bondholders have relied upon the constitutional prohibition on the use of local governmental credit in aid of a public corporation such as MAC. Diversion of sales tax revenues to the payment of MAC's bonds rather than New York City bonds impairs the solvency of New York City and unilaterally changes the risks associated with the ownership of City bonds.

9. **City Balanced Budget**—The City pays its bonds and conducts the business of government within the limitations of a statutory scheme which directs that expenditures will not exceed its revenues. It is the general revenues of the City which secures the City's bonds. Other than the real estate tax, any tax may be altered from time to time or repealed. But the altered or repealed tax must be replaced with a new tax or revenue. The budget must be in balance. It is the most plain impairment, with the budget about $1.5 billion in deficit, to transfer the almost $1 billion Sales Tax to a dummy corporation.

10. **Bondholders First Lien**—Since 1938 the City bondholders have been entitled to a first lien on all City revenues. N.Y. CONST. Art. VIII §2. If the City failed to appropriate debt service, the Comptroller was directed to make such payment from "the first revenues thereafter received". A bondholder could sue to compel the Comptroller to do so. With MAC the legislature has taken a major City tax, the Sales Tax, and given it to a new corporation. The Sales Tax is then said to be a State Tax, not a City revenue, and consequently not subject to the City bondholder's lien. The first

> lien provision was the bondholder's critical security. It established the bond, by Constitution, as the City's senior security. Short term revenue and tax anticipation notes are junior since they are not eligible for the first lien provision unless they are "not retired within five years after their date of original issue."

The "first lien" provision on the City's revenues was a major inducement to potential investors. In the Notice of Sale of $141,440,000.00 of Serial Bonds of the City of New York dated February 15, 1975 and prepared by the Comptroller, it was stated that: "Payment of debt service shall be a first lien on all of the City's revenues." (at p. 2)

The same Notice of Sale stated that if the City failed to appropriate debt service:

> " . . . a sufficient sum shall be set apart from the first revenues thereafter received and shall be applied for such purposes; also, that the fiscal officer of the City may be required to set apart and apply such revenues as aforesaid at the suit of any holder of such obligations." (at p. 2)

Page 7 of the Comptroller's Official Statement contains a chart entitled "Local Non-Property Taxes" which shows estimated budget receipts of $2,197,200,000. for 1974-75. Of this amount the City Sales Tax contributed $813,800,000. Nowhere in the Comptroller's Statement was there any indication that these revenues could be removed from the bondholder's lien by the simple expedient of renaming the City Sales Tax the New York State Sales Tax for the Benefit of New York City.

In 1974 the City issued a phamphlet entitled "Ten Good Reasons for Investing in Tax Exempt Bonds of the

City of New York." Reason Number 3, captioned "First and Prior Lien", stated:

> Holders of New York City Bonds have first and prior lien on all City revenues, including the tax yield from $79 billion in full valuation of real property (up from $38 billion in 1963-64): Total receipts of the City—exceeding $10 billion annually—are more than nine times the amount needed for debt service on the City's funded debt now outstanding.

On November 7, 1974 Mayor Beame and Comptroller Goldin wrote a letter to the New York Times, published November 11, which was run under the caption "New York City: The Sound Investment." Said the authors:

> It should be clear, in connection with our municipal budget, that the Constitution of the State of New York makes our New York City bonds and notes a first lien on all revenues—which include the real estate tax, all other city taxes, fees and permits, all state aid and all Federal aid. *New York Times*, November 11, 1974 at 23 col. 5.

In the spring of 1975 the City of New York was without cash or credit. Moreover, as Summer approached, it had falling due short term notes as follows:

June 11, 1975—$187 million of Tax Anticipation Notes

June 11, 1975—$315 million of Tax Anticipation Notes

June 11, 1975—$250 million of Revenue Anticipation Notes

June 25, 1975—$248.9 million of Bond Anticipation Notes

June 30, 1975—$400 million of Revenue Anticipation Notes

August 22, 1975—$141 million of Bond Anticipation Notes

September 15, 1975—$400 million of Revenue Anticipation Notes

TOTAL $2,542 billion of short term debt due between June 11 and September 15, 1975.

The holders of the short term debt due between June 11 and September 15, 1975 will be hereinafter referred to as the "SUMMER NOTEHOLDERS". These notes were issued in denominations of $25,000. to $100,000.

The City of New York was unable to borrow. The state legislature created a new corporation, MAC. MAC was given the City Sales Tax, told to go and borrow money on it, and then turn the money over to the City that was unable to borrow. The City could then pay the short term notes that were falling due.

The Court of Appeals of New York in the opinion below summarized the MAC legislation as follows:

> . . . The New York City sales tax was suspended, and an identical sales tax was imposed by the State, with the revenues to be committed to MAC (L 1975 Ch. 168, §§4, 7-a). This suspension of the city tax was to continue until all obligations of MAC had been repaid (L 1975 ch. 168, §4). In addition, to the extent necessary to enable MAC to meet its obligations and carry on its corporate purposes, MAC was to receive appropriations from the stock transfer tax fund (L 1975, ch. 168, 7-b). Appendix at A1-A2.

The creation of MAC permitted a solution of the City Crisis that was cost free to the State. No state money was needed. No state taxes were required. No use of the state's

credit was needed. The City had lost its credit. But the City continued to collect taxes, the sales tax and stock transfer tax brought in about $1 billion a year. The State's solution was to take that stream of revenues from the City and place it in a new corporation, MAC. The new corporation, with revenues of $1 billion, and no expenses, was thought easily to be able to borrow enough to pay off the SUMMER NOTEHOLDERS. There was also no cost to the City, it could continue with its deficit financing.

On June 10, 1975 the Governor approved Chapters 168 and 169 of the Laws of 1975 effective immediately. The laws created defendant Municipal Assistance Corporation for the City of New York which was described as a "corporate governmental agency and instrumentality of the state constituting a public benefit corporation."(§3033). Its purpose, according to the statute, was to "assist the city" and create "investor confidence." (§3031). The legislature stated that the City was unable to borrow "due to a general decline in investor acceptance of local government securities and to almost unprecedented interest rates." (§3002). The legislature further found that some cities "despite the financial soundness of their obligations" have recently faced difficulty in selling their debt. (Id.)

The Secretary of the Treasury has testified that "New York City has run operating deficits each year since fiscal year 1961. By fiscal year 1975, these deficits totalled over $4 billion." Testimony of Secretary William E. Simon, Hearings-Oversight on the New York City Seasonal Financing Act, to Committee on Banking, Housing and Urban Affairs, United States Senate, 94th Cong. 2d Sess. (April, 1976) at p. 17. Further, the Secretary has testified that the City had an operating budget deficit, in 1975-75, of $1.542 billion (including "Expense Bonds") and, in 1976-77, of $1.275 billion (including "Expense Bonds"). Testimony of Secretary William E. Simon, Hearings-Oversight on New York City Loan Program, to Committee

on Banking, Housing and Urban Affairs, United States Senate, 94th Cong. 2d Sess. (December, 1976) at p. 8-9.

The June, 1975 legislation authorized MAC to borrow $3,000,000,000. at such interest rates as it could negotiate (§3033). The original purpose of MAC, as explained by state officials to the press, was to "pay off the $3 billion of the city's short term debt that falls due between now and Labor Day" *New York Times*, June 6, 1975 at p. 1 col. 8. It was expected that the City could return to the credit market on its own in October, 1975. *New York Times*, June 12, 1975 at p. 52 col. 1.

MAC was unable to accomplish its purpose. The initial $1 billion of MAC bonds offered in July 1975 was sold only with great difficulty. In August, an intended sale of $1 billion had to be cut back to $275 million. The September intended sale of $1 billion was called off.

In view of the failure of MAC the State felt constrained to adopt other policies in September. First, the legislature created the New York City Emergency Financial Control Board and granted it powers to control the City's finances. L. 1975 ch. 868, §2 as amended by L. 1975 ch. 869 and L. 1975 ch. 870. Second, the State undertook to borrow $750 million on its own credit and turn the proceeds over to the City. L. 1975 ch. 868, §22, 23 as amended by L. 1975 ch. 870. Third, the legislature enacted a stay law. L. 1975 ch. 868 §19 as amended by L. 1975 ch. 870.

The stay law added a new Title 6-A to the Local Finance Law. Title 6-A purported to alter constitutional rights. According to the Constitution, Article VIII, Section 2, a City bondholder may bring an action to require a set aside of the "first revenues thereafter received" if the City fails to make an annual appropriation for payment of his debt. According to the new statute a bondholder may not maintain an action unless "payment" by the City is "due or overdue." (§85.10). Further, even after nonpayment, the law imposed a new condition precedent on the City bond-

holder. He is required, prior to bringing any action, to serve a demand for payment on the City and then wait for 30 days. (§85.10). During the waiting period, the City or the Control Board is authorized to file a voluntary petition in court reciting that the City is unable to pay its debts as they mature. (§85.30). The filing of the action acts as an automatic stay to all actions and proceedings. (§85.30). The stay may remain in place for an indefinite time. The City is required to file a "repayment plan" within 90 days, or such additional time as the court, after a hearing, may allow, during which time the stay continues. (§85.30). The court, after a hearing, may approve the filed plan (§85.40). If approved, the court shall extend the stay "for such additional period of time as is required to carry out fully all the terms and provisions of the plan." (§85.40) The plan is to provide that creditors, including bondholders, be paid as promptly "as is practicable under the circumstances" after "giving due regard to the financial condition of the municipality and to the necessity for the municipality to expend moneys to maintain and provide services." (§85.40). Provision is also made for amended and modified plans and further stays. (§85.40 and §85.60).

On November 14, 1975 the legislature enacted the Moratorium Act. L. 1975, ch. 874 as amended by L. 1975 ch. 875. The Act extended for three years the maturities on $1.6 billion of publicly held short term notes. Instead of payment the noteholders were given the option of exchanging their notes for 10 year 8 percent MAC bonds or holding their notes which were by law extended to 1978 maturity and the interest thereon reduced to 6 percent. After two MAC exchange offers about $1 billion in notes remained in the public. On November 19, 1976 the Moratorium Act was held unconstitutional. *Flushing Nat.. Bank v. MAC*, 40 N.Y. 2d 731 (1976). The court relied solely on state constitutional grounds. The Federal Contract Clause cases, which had been argued by the parties,

were found by the Court to "cast little light" on the issues. 40 N.Y. 2d. at 740.

The so-called "rescue" effort has dramatically increased the City's debt burden and reduced the likelihood that the City bonds will be paid.

Pre-"Rescue"	**Bonds**	**Notes**	**Total**
June 30, 1974	$6.728	$3.421	$11.149 Billion

Post-"Rescue"	**Bonds**	**Notes**	**MAC**	**Total**
April 30, 1976	$7.495	$5.856	$3.809	$17.2 Billion
April 30, 1977	$7.932	$6.066	$4.362	$18.4 Billion*

Further it is fairly clear that by June 30, 1978, the end of the Three Year Financial Plan, the total will be around $21 Billion.

How The Federal Questions Were Rasied And Decided Below

Appellants in their complaint asserted that the existence of MAC and the diversion of the Sales and Stock Transfer Taxes as well as the failure to maintain a balanced budget impaired the contract of the City bondholder in violation of the Contract Clause of the United States Constitution.

The lower court held chapters 168 and 169 to be valid and constitutional. The court stated that a balanced budget was not a "term of the contract." (A-5)

The court entered an order granting defendants cross motions for summary judgment declaring chapters 168 and 169 valid and constitutional.

On appeal, the Court of Appeals affirmed the judgments below. The court found that there is no requirement "that the diverted taxes be continued directly payable to the city". (A). The City's "traditional source of

* CITY PROSPECTUS OF MAY 20, 1977 AT 56.

revenue" is the real estate tax and only it is constitutionally protected. (A-2). The court made no mention of the balanced budget requirement apparently agreeing with the lower court that the State and City are not required to maintain a balanced budget.

The Federal Questions Are Substantial

I

The judgment of the New York Court of Appeals presents the substantial question whether a State can set up a dummy corporation to deprive City bondholders of their security or whether such bondholders are protected by the Contract Clause of the United States Constitution.

This Court, in the *Port Authority* decision, held with respect to public contracts, that an "impairment may be constitutional if it is reasonable and necessary to serve an important public purpose." *United States Trust Co. v. New Jersey* U.S. 97 S. Ct. 1505, 1519, 52 L. Ed. 2d 92, 112 (1977) Or, as the Chief Justice wrote in his concurring opinion, "The State must demonstrate that the impairment was essential to the achievement of an important state purpose." U.S. at 97 S. Ct. at 1523; 52 L. Ed 2d at 116. This Court further found.

> In applying this standard, however, complete deference to a legislative assessment of reasonableness and necessity is not appropriate because the State's self-interest is at stake. A governmental entity can always find a use for extra money, especially when taxes do not have to be raised. U.S. at ; 97 S. Ct at 1519-20; 52 L. Ed 2d at 112.

This case presents a far more extreme impairment than that struck down in the *Port Authority* case. The

analogy to the Port Authority situation would be if the States had transferred the George Washington Bridge, Lincoln Tunnel and Holland Tunnel to a new public corporation, the Port Authority Assistance Corporation, directed it to borrow on behalf of the Port Authority, (which used the proceeds to pay off a class of unsecured creditors), and informed the old Port Authority bondholders that their interest in the toll revenues was now subordinate to the new bonds issued by the Port Authority Assistance Corporation. Clearly, this Court would not uphold such an impairment. Indeed, summary reversal is appropriate in this case.

The New York Constitution's fiscal provisions are based upon sound economic principles. A City may issue bonds only for capital projects. A City's capacity to borrow, further, must be limited to prevent an undue burden on the future and bankruptcy. If a City borrows, it must pledge its full faith and credit—its commitment to pay must be clear and unambiguous so that the future burden may be understood. A City must have income to cover its expenses. Short-term borrowing must be in anticipation of real revenues or taxes. City funds may not be used to bail out an authority. If the City fails to appropriate debt service the bondholders have a first lien on the "first revenues thereafter received". The bondholders' reasonable expectations were that these state constitutional provisions would continue to be binding.

The constitutional pattern imposes fiscal limits for the benefit of the public and the bondholders.

The City bond is a general obligation instrument. No specific assets or taxes (other than the real estate tax) are pledged. The bondholder purchases with the expectation that other City debt may be issued. It may issue bonds for capital projects and within its ten percent debt limit. It may issue notes in anticipation of taxes and revenues due within one year. A later unlawful borrowing would, of course, impair the bondholders security.

The bondholder believes he is protected by the detailed constitutional provisions limiting when bonds and notes may be issued. Only as specified in the Constitution may the City incur any further burdens. Combined with the requirement of a balanced budget the bondholder believes he has a secure investment. If the Constitution is obeyed it is very unlikely that the City will get into trouble. If that unlikely event does occur the bondholder believes he is protected by the first lien provision requiring that "the first revenues thereafter received" be set aside for payment to bondholders. The Constitution provides a complete and coherent framework of protection for the bondholder.

But the New York legislature has turned the traditional constitutional pattern into a cruel hoax. The Constitution, according to the New York Court of Appeals, only limits the actions of cities. It does not refer to dummy corporations set up to borrow on behalf of the City and funded with City taxes. With this remarkable sleight of hand all of the bondholders protections are destroyed. The dummy corporation is not restrained by any of the constitutional provisions that bind government itself. It may borrow in excess of the City's debt limit. It may borrow to pay operating expenses. It may borrow to fund a deficit. The City's taxes may be relabeled and applied to the dummy's debt. The constitutional system is made meaningless. By means of this subterfuge some $4.4 billion of unlawful debt is imposed upon the City.

According to this current New York theory the Constitution binds the legislature only as long as it wishes to be bound. When it no longer wishes to be bound it may set up a dummy corporation which is free of all constitutional restrictions. The bondholder consequently becomes a speculator, hoping that the legislature will choose to comply with the Constitution. Obviously, no one would invest his money based on such a hope. If the alter-ego dummy corporation is free of constitutional restraints

the traditional municipal bond system must fail. New York has ignored the Constitution to reach its present predicament. Now, just as the bondholder's safeguards appear crucial, it seeks to withdraw them. Constitutional protection must not be treated with such cynicism.

The bondholders contract with New York provided that only two types of City debt could be issued: (1) bonds for capital projects and (2) notes in anticipation of taxes or revenues. The Constitution prescribed the necessary conditions for each of these lawful borrowings. The tremendous illegal borrowing incurred by MAC is an impairment of the City bondholders' security. MAC has permitted the City of New York to continue massive deficit financing and avoid fiscal reality. The likelihood that the City bonds will be paid becomes increasingly dim as the pile of debts goes even higher.

The MAC debt has been issued in violation of the Federal Constitution. As this Court has said:

> an unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no protection; it creates no office; it is in legal contemplation, as inoperative as though it had never been passed. *Norton v. Shelby County*, 118 U.S. 425, 442, (1886).

II.

The existence and nature of a contract within the Contract Clause is a matter for this Court to decide.

Counsel for MAC has already assured the directors of MAC, and the press, that this Court will dismiss this appeal. The *New York Times* reports:

> The directors of the MAC heard their counsel, former Federal Judge Simon H. Rifkind, assure

> them that the court would probably not even bother to hear the appeal. *New York Times*, May 6, 1977 at B-6 col. 1.

MAC attorneys had earlier explained to the press why this Court would not hear this case. The *New York Times* reports:

> Attorneys for the M.A.C. said yesterday that "whether a particular set of facts constitutes a contract is a matter of state law, not Federal law," and that therefore they viewed the court decision as "definitive". *New York Times*, April 27, 1977 at 1, col. 1.

The attorneys for MAC are apparently unaware that this Court has repeatedly held that its jurisdiction was not so easily foreclosed. In *Coombes v. Getz*, 285 U.S. 434, 441 (1931) this Court reaffirmed a long line of authority as follows:

> The decision of the supreme court of a state construing and applying its own constitution and laws generally is binding upon this court; but that is not so where the contract clause of the Federal Constitution is involved. In that case this court will give careful and respectful consideration and all due weight to the adjudication of the state court, but will determine independently thereof whether there be a contract, the obligation of which is within the protection of the contract clause, and whether that obligation has been impaired; and, likewise, will determine for itself the meaning and application of state constitutional or statutory provisions said to create the contract or by which it is asserted an impairment has been effected.

See also *Jefferson Branch Bank v. Skelly*, 1 Black 436, 443 (1861); *Wright v. Nagle*, 101 U.S. 791, 793-94 (1879); *Louisville & Nashville R.R. Co. v. Palmes*, 109 U.S. 244, 256-57 (1883); *Louisville Gas Co. v. Citizens Gas Co.*, 115 U.S. 683, 697 (1885) and *Stearns v. Minnesota*, 179 U.S. 223, 232-33 (1900).

Counsel to MAC has further explained its position to the public in a *Letter to the Editor* of the *Wall Street Journal* published May 9, 1977. Counsel Rifkind concluded.

> The Port Authority decision does not affect the validity of the unanimous Court of Appeals decision upholding MAC. *Wall Street Journal*, May 9, 1977 at 23 col. 5.

Counsel to MAC observed that there was no contractual duty on "New York State to continue to impose a New York City sales tax." Id. The State, since it was under no obligation, could rename the tax and divert it to MAC.

In fact, of course, the State was simply depriving City bondholders of their exclusive remedy just as it appeared it would be needed. The State intentionally removed revenues from the bondholders' lien. This was done to give the State, cost-free, a revenue stream on which it could float a loan. In order to pay off the SUMMER NOTEHOLDERS, a junior security.

The State chose the MAC route because it was the only solution that was cost-free to the State. The State, with its great resources and credit, was easily able to assist its major city. Instead, it chose to avoid its responsibility and put all the cost onto the existing City bondholders. There were a whole range of policy alternatives: (1) the State could have imposed sufficient taxes; (2) the State could have borrowed on its general credit; and (3) the State could have passed a new tax and dedicated it to a new borrowing.

The first lien provision does not, of course, freeze the tax structure as of the date of the contract. The Constitution provides that the legislature shall not "restrict the power to levy taxes on real estate for the payment of interest or on principal of indebtedness theretofore contracted." N.Y. CONST., Art. VIII §2. But with that single exception, the legislature retains full power over taxation. Other than the real estate tax, any tax may be altered from time to time or repealed. The present case, however, does not involve repeal, it involves relabeling and diversion. It involves a preference—in violation of the constitutional priorities—to the SUMMER NOTEHOLDERS over the City bondholders. It is not a legitimate exercise of the power of taxation.

Further, the New York Constitution and City Charter (sections 116-128) require the City to maintain a balanced budget. Consequently, any tax may be altered or repealed but the altered or repealed tax must be replaced with a new tax or revenue. The budget must be in balance. It is the most plain impairment, with the budget about $1.5 billion in deficit, to transfer the almost $1 billion sales tax to a dummy corporation.

It should be clear to all that the City has not provided a balanced budget in 1975-76 and 1976-77. The New York City Financial Plan dated January 1976 forecast for the 1975-76 fiscal year revenue of $12,721,000,000. and expenses of $13,786,000,000. That Plan forecast for the 1976-77 fiscal year revenue of $12,991,000,000 and expenses of $13,978,000,000. Indeed, these figures understate the operating deficit since they include as revenue about $700 million (each year) of bond proceeds which were illegally issued to pay expenses rather than capital projects.

III.

It is of great importance to New York City bondholders that this Court restore constitutional principles within the State of New York.

The municipal bond was created by this Court in the post Civil-War period. In such cases as *Gelpcke v. Dubuque*, 68 U.S. (1 Wall.) 175 (1865) this Court went to great lengths to assure bondholders that certain fundamental unalterable principles did exist.

A long term debt requires a reasonably stable society. The state or city offer the investor the following contract: "If you will loan me a $1,000,000. of your money today I will promise to pay you 7% interest each year and, after 40 years, repay the $1,000,000. of principal." The due date, the year 2017, is far in the future. By traditional notions 40 years is the time of 2 generations. A great deal of change would be expected even in a fundamentally sound society. How then can the investor be induced to part with his money now in exchange for a promise of repayment in the distant future? He must believe that certain fundamental principles will be fixed and unchangeable.

In the *Municipal Bond* cases this Court created the legal framework to assure the investor. The bond must cease to be the province of the speculator and become the choice of the country's most prudent and conservative investors. Local government could then secure its needed funds at the lowest possible interest rate. This Court could not, of course, assure payment—a town might default. But it could assure that the terms of the obligation could not be changed.

When a state or city borrowed money it made a contract. Once the contract was made it was absolutely fixed. The Contract Clause would strike down any attempt at alteration.

The Contract Clause would fix the terms and conditions of the debt once made. The bondholders had only to negotiate favorable terms and they would have a legally secure investment. Of course, legal safeguards might not prevent a default. But, as a condition of the borrowing, the bondholders could insist on specific remedies in case of non-payment. They could provide, as does the New York Constitution, that in the event of a failure to appropriate the Comptroller shall "set apart from the first revenues thereafter received" a sufficient sum. N.Y. CONST. Art. VIII §2.

The financial community is well aware that only this Court can restore the municipal bond to its prior vitality. On August 11, 1976 the *Wall Street Journal* editorialized:

> There may be some short-term benefit for New York and a few other local authorities in giving local governments the power to abrogate their contracts with bondholders without benefit of official bankruptcy proceedings or any other judgment by a neutral third party. But it can only work to the detriment of public finance by the great bulk of local governments.
>
> * * *
>
> Perhaps it seems implausible that the Supreme Court would send the nation's largest city into bankruptcy because of a legal point like the sanctity of contract. But that legal point protects the investor when he lends his money to the state, and without it every governmental unit will suffer. *Wall Street Journal*, August 11, 1976 at 12 col. 1.

Similarly, following *United States Trust Company of New York v. New Jersey*, U.S. 97 S. Ct. 1505, 52 L. Ed 2d 92

(1977), the financial community looks to this case as a crucial test. On April 29, 1977, the *Wall Street Journal* editorialized:

> It remains to be seen where public contracts *can* be impaired, and the next crucial test will very likely be the appeal from Tuesday's New York State Court of Appeals decision upholding the validity of the Municipal Assistance Corporation.
> These future suits may be potentially more uncomfortable for New York than the Port Authority decision. The suit against MAC, which the present decision seems to strengthen, could entail the repudiation of billions in bonds and the bankruptcy of New York City. But the court is affirming a principle basic to this country's public finance. Even though the hypothetical consequences of its decision may be made to seem very grim, the alternative, to weaken the legal underpinnings of municipal bonds, would have been far worse. (emphasis in original). *Wall Street Journal*, April 29, 1977 at 12 col. 1.

There would, however, seem no reason for the city to go into bankruptcy. The MAC statute, section 3036 (4), provides that there "shall be annually appropriated and paid to the corporation" by the State any deficiency in the capital reserve fund. It would be expected that the State would honor its commitment to the MAC bondholders.

IV.

The Constitutional Priority of City Bonds Must Be Upheld.

Since 1938 the New York Constitution has required the City to make an annual appropriation for debt service on its bonds. The provision continues:

> "If at any time the respective appropriating authorities shall fail to make such appropriations, a sufficient sum shall be set apart from the *first revenues thereafter received and shall be applied to such purposes.* The fiscal officer of any county, city, town, village or school district may be required to set apart and apply *such revenues* as aforesaid at the suit of any holder of obligations issued for any such indebtedness." (emphasis added)

N.Y. CONST. Art. VIII, §2.

This provision is not applicable to City short-term notes unless they are unpaid for five years after issue. Id. See *Flushing Nat. Bank v. MAC*, 40 N.Y. 2d. 731, 737-38 (1976).

Prior to 1938 the essential bondholder protection was the unlimited real estate tax. The bondholder could mandamus the Tax Collecting officials to levy, collect and pay over the real estate tax. The Constitution made clear that there was no limitation as to rate or amount. Since 1884 the legislature has been limited in the amount of real estate taxes which it may authorize a city to impose. In New York City the normal tax limit provides that real estate taxes may not exceed 2.5% of the average full valuation of taxable real estate. N.Y. CONST. Art. VIII, §10. Amounts raised within the normal tax limit may be expended for any "city . . . purposes." The purpose of the tax limit is to limit the taxation of real estate for current operating ex-

penditures. In addition to the 2.5% tax limit the Constitution permits the levy of real estate taxes, in any amount, to provide "for the interest on and principal of all indebtedness." Id.

Consequently, a bondholder, or noteholder, could maintain an action based on Article VIII, section 10 of the Constitution to enforce collection of the real estate tax sufficient to pay his debt.

Until 1938 the bondholder's exclusive remedy was a mandamus action against the Tax Collecting officials to levy the real estate tax. During the depression the extreme inadequacy of this remedy became evident. This Court characterized it as "the empty right to litigate":

> The only remedy for the enforcement of such a claim is a mandamus to compel the levying of authorized taxes. The experience of the two modern periods of municipal defaults, after the depressions of '73 and '93, shows that the right to enforce claims against the city through mandamus is the empty right to litigate. *Faitoute Iron & Steel Co. v. Asbury Park*, 316 U.S. 502, 510, (1942).

The Court continued:

> there is no remedy when resort is had to devices and contrivances to nullify the taxing power which can be carried out only through authorized officials. See Rees v. Watertown, 19 Wall 107, 124. And so we have had the spectacle of taxing officials resigning from office in order to frustrate tax levies through mandamus, and officials running on a platform of willingness to go to jail rather than to enforce a tax levy (see Raymond, State and Municipal Bonds, 342, 343) and of evasion of

BEST COPY AVAILABLE

> service by tax collectors, thus making impotent a court's mandate. Id. at 511.

This history was well known to the draftsmen of the 1938 Constitution. They also knew that a first lien provision applicable to State bonds, added to the Constitution in 1920, had been a success. They determined to adopt a similar provision applicable to local bodies. The Committees on State Finances and Revenues, Cities, Counties and Towns, and Villages explained the purpose as follows:

> The last paragraph of the section as proposed is adapted from Article VII, Section 11, which provides that if appropriation is not made by the State for its required debt service, the Comptroller shall set apart from the first revenues thereafter received a sum sufficient to meet such debt service and shall apply the moneys thus set apart. "The Comptroller may be required to set aside and apply such revenues as aforesaid, at the suit of any holder of such bonds." This section of the State Constitution has been of inestimable value in building up and maintaining the credit of the State, and a similar provision applicable to bonds issued on the full faith and credit of a locality will, the committees believe, have similar result. Sound credit not only results in lower interest rates and consequent saving to the taxpayers but assures the locality of the opportunity to issue obligations when it finds it necessary to do so.

JOURNAL OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF NEW YORK, 1938, App. 3, Doc. No. 6 at p. 3.

As noted the Report states that the local provision will be "applicable to bonds."

BEST COPY AVAILABLE

The local first lien provision accomplished two objectives. First, by Constitution, the State surrendered the power to repudiate debt on behalf of a locality. *Meriwether v. Garrett*, 102 U.S. 497 (1880). Second, the local first lien provision replaces the "empty right to litigate" with a relatively simple means of enforcement. One that seemed as strong as the draftsmen could make it: (1) the bondholder did not have to wait for actual non-payment—the section was triggered by the failure to appropriate in the annual budget; (2) hopefully, the bondholder would not be required to bring an action—the provision imposed a constitutional duty on the Comptroller to "set apart from the first revenues thereafter received"; and (3) if the bondholder did have to bring an action it would be a fairly simple proceeding—against the Comptroller for a court order directing him to "set apart and apply such revenues as aforesaid."

The first lien provision, in its entirety, reads:

> **Provision shall be made annually by appropriation by every county, city, town, village and school district for the payment of interest on all indebtedness and for the amounts required for (a) the amortization and redemption of term bonds, sinking fund bonds and serial bonds, (b) the redemption of certificates or other evidence of indebtedness (except those issued in anticipation of the collection of taxes or other revenues, or renewals thereof, and which are described in paragraph A of section five of this article and those issued in anticipation of the receipt of the proceeds of the sale of bonds theretofore authorized) contracted to be paid in such year out of the tax levy or other revenues applicable to a reduction thereof, and (c) the redemption of certificates or other evidence of indebtedness issued in anticipation of**

> the collection of taxes or other revenues, or renewals, which are not retired within five years after their date of original issue. If at any time the respective appropriating authorities shall fail to make such appropriations, a sufficient sum *shall be set apart from the first revenues thereafter received* and shall be applied for such purposes. The fiscal officer of any county, city, town, village or school district may be required to set apart and apply *such revenues* as aforesaid at the suit of any holder of obligations issued for any such indebtedness. (emphasis added)

N.Y. CONST. Art. VIII §2.

The language "may be required to set apart" has been interpreted as mandatory in *Van Derzee v. City of Long Beach*. 265 App. Div. 1059 (2d Dept. 1943). The court ruled:

> In view of the mandatory provisions of the section in question, hardship is no defense to the payment of interest by the city of its indetedness to petitioner. The mandate of the Constitution must be obeyed. Id. at 1060.

It will be noted that Tax Anticipation Notes and Revenue Anticipation Notes are not eligible for the first lien unless they are "not retired within five years after their date of original issue."

The constitutional language "first revenues thereafter received" and "such revenues" is at issue in this case. Initially it may be noted that the Constitution refers to "revenues". The language does not limit the bondholder lien to "real estate taxes".

The first lien provision has been a primary selling point for New York City bonds. The security and commitment seemed absolute. The City must pay the bondholders first—before the police, fire and sanitation. Since these groups had to be paid to prevent anarchy a responsible government had to maintain sufficient revenues to meet debt service. This priority was protected by the Contract Clause of the Federal Constitution. Either a noteholder or bondholder could bring a mandamus to compel the levying of the unlimited real estate tax. The first lien, on the other hand, was exclusively a bondholder's protection. Notes are eligible for it only if they are unpaid for five years after issue.

But now comes MAC to argue that the first lien is an empty provision. MAC maintains that if there are no City "revenues" there is nothing for the bondholders lien to apply to. It seems startling to consider a City with no revenues, but, according to MAC, it is simple enough. The State has assigned City taxes to the newly created dummy corporation, MAC. The City Sales Tax was renamed and transferred to MAC. Then, MAC argues, the sales tax is not a City revenue and consequently not subject to the City bondholder's lien. According to MAC these revenues were removed from the bondholder's lien by the simple means of renaming the City Sales Tax the New York State Sales Tax for the benefit of New York City.

By this construction, the first lien provision was a trick played on bondholders. The State promised bondholders a lien on "revenues". But it retained the power to rename City Taxes as State Taxes and assign them to dummy corporations. The MAC interpretation is offensive to fair dealing and the respect we owe to the constitutional process.

Chapter 168, in purporting to transfer the City Sales Tax to MAC, is in violation of the Contract Clause of the Federal Constitution, Article I, Section 10.

V.

The court below failed to apply the precedent established by this Court.

The *MAC* case is not the first time that a state has acted to help a local government evade its obligations. This Court has decided a substantial body of cases dealing with repudiated promises. MAC considers these cases to be archaic. The New York court failed to apply these cases.

In *Von Hoffman v. Quincy*, 4 Wall. 535, (1866), the Illinois legislature had authorized the City of Quincy to borrow money and invest in railroad stock. The same act authorized a special annual tax upon real and personal property sufficient to pay the annual interest on such bonds. The tax, when collected, was to be set aside and used only for this purpose. The City failed to pay the interest coupons "a long time after they became due" and refused to levy the tax. Id. at 536. Von Hoffman recovered a judgment in 1863 which was returned unsatisfied. He then prayed for a writ of mandamus directing the City to levy the special tax. In 1863 the legislature enacted a new law limiting the City's power to tax. The new law repealed all existing statutes authorizing the imposition of taxes. The new law specified that the city could tax no more than (1) $.28 per $100 of value for gas lighting; (2) $.25 per $100 of value for education; and (3) $.50 per $100 of value for debt service and general expenses of the city.

The City answered Von Hoffman stating that the $.50 per $100 would not be sufficient to pay the city's expenses and debts. This Court found the 1863 repealing law to be invalid. It held:

> It is well settled that a State may disable itself by contract from exercising its taxing power in particular cases. New Jersey v. Wilson, 7 Cranch 164 (1812). It is equally clear that where a state has

> authorized a municipal corporation to contract and to exercise the power of local taxation to the extent necessary to meet its engagements, the power thus given cannot be withdrawn until the contract is satisfied. The State and the corporation, in such cases, are equally bound. The power given becomes a trust which the donor cannot annul, and which the donee is bound to execute; and neither the State nor the corporation can any more impair the obligation of the contract in this way than in any other. 4 Wall. at 554-555.

Mount Pleasant v. Beckwith, 100 U.S. 514 (1879) involved the debt of a municipal corporation which had been legislated out of existence and its territory annexed to other corporations. In 1853 the town of Racine issued $50,000 of its bonds in exchange for Railroad Company stock. In 1860 the Wisconsin legislature extinguished the town of Racine. Its territory was attached to the town of Mount Pleasant and the town of Caledonia. The act made "no provision . . . for the payment of the corporate debts." Id. at 517.

In 1873, Beckwith, a town of Racine bondholder, brought suit. The lower court held that the recipient towns took the territory subject to an "equitable liability" for the accrued indebtedness. Each town was consequently liable to Beckwith in proportion to the "taxable property received by each." Id. at 518. This Court affirmed.

This Court noted, "the constant practice is to divide large municipalities and to consolidate small ones, or set off portions of territory from one and annex it to another. Id. In making such alterations, the "legislature may apportion the common property and the common burdens," Id. If they fail to make provision the Court will apply certain general principles.

Mount Pleasant presents that issue in its most extreme form since the legislature had extinguished the debtor. This Court stated:

> In such a case, if no legislative arrangements are made, the effect of annulment and annexation will be that the two enlarged corporations will be entitled to all the public property and immunities of the one that ceases to exist and that they will become liable for all the legal debts contracted by her prior to the time when the annexation is carried into operation. 100 U.S. at 528.

It was further noted that:

> Text-writers concede almost unlimited power to the State legialature in respect to the division of towns and the alteration of their boundaries, but they all agree that in the exercise of these powers they cannot defeat nor impair the obligation of a valid contract. 100 U.S. at 533.

This Court observed that municipal debts are not paid by legislative acts repealing a charter. It concluded that the surviving towns became liable for the debt.

Mount Pleasant establishes the proposition that a State, having created a political entity and empowered it to borrow, may not annex its territory to another entity and diminish the revenues avilable to pay its debts, without making adequate provision for the payment of pre-existing debt. If the legislature does not make such provision, the courts will apportion the indebtedness among the resulting entities. Revenues, like land, may be annexed. The State having created a political entity and having empowered it

to borrow money may not annex revenues which were available for payment of its debts to another entity. Fiscal annexation is not permitted.

In 1885, another dissolved town case came to this Court. *Port of Mobile v. Watson*, 116 U.S. 289 (1885). *Port of Mobile* is quite similar to the present facts. The legislature attempted to make certain formal changes. This Court, however, looked to the substance.

The City of Mobile had issued $1 million of bonds to aid a railroad. A related ordinance provided for a special annual tax of $95,000. The bonds were issued in 1859 and matured in 1879.

However, in 1879, instead of paying the due bonds, the legislature dissolved the City of Mobile. A companion law incorporated a new city to be known as the Port of Mobile. The Port had about eight square miles while the old City had about seventeen. However, the Port included "all the thickly settled and closely built portion of the City." Id. at 300. Out of $16,000,000. of taxable property of the City, all but $900,000 was included within the Port. Further, fourteen-fifteenths of the population of the City were included within the Port.

This Court held that the Port was the successor in law of the former City and liable for its debts. The Contract Clause prohibited the withdrawal of the taxing power. The Court cited its earlier cases for the now well-established rule that:

> Therefore the remedies for the enforcement of such obligations assumed by a municipal corporation, which existed when the contract was made, must be left unimpaired by the legislature, or, if they are changed, a substantial equivalent must be provided. Where the resource for the payment of the bonds of a municipal corporation is the power of taxation existing when the bonds were issued,

any law which withdraws or limits the taxing power and leaves no adequate means for the payment of the bonds is forbidden by the Constitution of the United States, and is null and void. Id. at 305.

Port of Mobile is clear authority for the proposition that artificial, formal, alterations, such as the renaming of the Sales Tax, are not effectual to permit impairment of contractual obligations. Chapters 168 and 169 of the 1975 Laws of New York are null and void.

CONCLUSION

This Court should summarily reverse the judgment of the Court of Appeals of New York and find Chapters 168 and 169 of the Laws of New York of 1975 null and void in their entirety as in violation of the Contract Clause of the United States Constitution.

Respectfully submitted,

William J. Quirk
Leon E. Wein

Attorneys for Appellants

APPENDIX A

Decision of the Court of Appeals of New York

WILLIAM J. QUIRK et al., Appellants, v MUNICIPAL ASSISTANCE CORPORATION FOR THE CITY OF NEW YORK et al., Respondents.

Argued March 31, 1977; decided April 26, 1977

Per Curiam. These cases present a very narrow issue. That issue is whether the State's "diversion" of the proceeds of the New York City sales tax and the tax on stock transfers from the general revenues of New York City to the Municipal Assistance Corporation unconstitutionally impairs the rights of city bondholders. Plaintiffs, holders of New York City longterm bonds, seek declatory judgments that the challenged diversion is unconstitutional. They appeal directly from summary judgments in favor of defendants granted by Supreme Court (see CPLR 3212; N.Y. CONST. Art VI, §3; CPLR 5601, subd [b], par. 2).

The summary judgments should be sustained. There is no requirement, either in the State Constitution or in any undertaking in the city bonds, that the diverted taxes be continued directly payable to the city. There is not, and never has been, an agreement, express or implied, that the revenues of these taxes be used to repay city bonds. Thus, since the challenged diversion does not impair any contractual obligations, the Federal Constitution is not violated (see U.S. CONST. Art. I, §10).

On June 10, 1975, by action of the State Legislature, the Municipal Assistance Corporation for the City of New York was created (L 1975, chs 168, 169; see *Flushing Nat. Bank v. Municipal Assistance Corp. for City of N.Y.*, 40 NY 2d 731, 733). To provide the new entity with a financial base, the New York City sales tax was suspended, and an

identical sales tax was imposed by the State, with the revenues to be committed to MAC (L 1975, ch. 168, '4, 7-a. This suspension of the city tax was to continue until all obligations of MAC had been repaid (L 1975, ch. 168, §4). In addition, to the extent necessary to enable MAC to meet its obligations and carry out its corporate purposes. MAC was to receive appropriations from the stock transfer tax fund (L 1975, ch. 168, §7-b). It is the diversion of these tax revenues, and no other portions of the applicable statutes, that plaintiffs challenge in this litigation.

Plaintiffs' contention is simply stated: the diversion of tax revenues from the city to MAC impairs the position of city bondholders, since fewer tax revenues will be available for repayment of principal and interest on city bonds. Therefore, the argument runs, the diversion is an impairment of contract in violation of the Federal Constitution (U.S. Const., Art. I, §10).

The answer to plaintiffs' contention is equally simply stated. In no way was the city ever committed to maintain sales tax revenues or stock transfer tax revenues for the benefit of its bondholders. That these taxes have been a substantial source of revenue for the city, in one instance since the 1930's and in the other since 1965, is of no consequence. What is important is that city bondholders are protected by the State Constitution, which obligates the city to appropriate moneys for the repayment of city bonds, and to exceed normal real estate tax limitations in order to raise the necessary moneys (N.Y. Const., Art. VIII, §2, 10, 12). In those provisions, which reflect the municipality's traditional source of revenue from its real estate tax levy, lies the constitutionally guaranteed protection of city bondholders.

Assuredly, the State Constitution provides that unpaid bondholders for whom moneys have not been appropriated are entitled to have sufficient sums for repayment "set apart from the first revenues thereafter received and

* * * applied to such purposes" (N.Y. Const. Art. VIII, §2). But this "first lien" on the city's revenues does not give bondholders the right to insist that any particular existing taxes be maintained or new ones imposed to produce those revenues. It only assures that out of the revenues which are collected, money must be provided to satisfy obligations to the bondholders.

On the other hand, with respect to the traditional real estate tax levies, the bondholders are constitutionally protected against an attempt by the State to deprive the city of those revenues to meet its obligations. Section 12 of article VIII of the State Constitution prohibits the Legislature from restricting the power of a locality "to levy taxes on real estate for the payment of interest on or principal of indebtedness theretofore contracted." This provision, combined with the city's pledge of faith and credit, constitutionally mandated in all municipal contracts of indebtedness, requires the city to raise real estate taxes, and without specification other revenues, if such a levy be necessary to repay indebtedness (N.Y. Const. Art. VIII, §2; *Flushing Nat. Bank v. Municipal Assistance Corp. for City of N.Y.*, 40 N.Y. 2d 731, 736-737, *supra*). The challenged statute does not, and could not, alter this obligation. A different case would be presented if, realistically, the city were stripped of all sources of revenue, other than the real estate tax, and its outcome would be, at this time, unpredictable (cf. *Mobile v Watson*, 116 U.S. 289, 305).

Plaintiffs' thesis rests on an untenable contention, namely, that city bondholders were entitled to rely on continued collection of the now diverted taxes. Nowhere, however, not in the State Constitution and not in the bonds themselves, is there any requirement that collection of particular taxes be continued. As a consequence, there is no impairment of obligation of contract under the Federal Constitution.

Accordingly, the judgments should be affirmed, without costs.

Chief Judge BREITEL and Judges JASEN, GABRIELLI, JONES, WACHTLER and COOKE concur in *Per Curiam* opinion; Judge FUCHSBERG taking no part.

In each case: Judgment affirmed.

Decision of the Supreme Court of New York, Kings County

Summary judgment is sought by plaintiffs, who bring this action as holders of bonds of the City of New York for a declaratory judgment that Chapters 168 and 169 of the Laws of 1975 of the State of New York, as amended, were enacted in violation of Article I, section 10, Clause 1 of the Constitution of the United States which provides, in pertinent part, that "no State shall . . . pass any . . . . Law impairing the Obligation of Contracts . . . "

The defendants, Municipal Assistance Corporation for the City of New York (hereinafter sometimes referred to as "MAC") and the City of New York, respectively, cross-move for summary judgment declaring Chapters 168 and 169 aforementioned to be valid and constitutional.

Specifically, plaintiffs challenge those provisions of Chapters 168 and 169 which suspend the authority of the City to impose a sales tax, impose a new state sales tax within the City, and provide for an annual appropriation of the proceeds of this tax as well as of the state stock transfer tax to MAC, to the extent necessary to pay on the bonds issued by MAC, an agency of the state.

The basic issues here raised have already been decided in favor of the constitutionality and validity of the challenged legislation (see, *Flushing National Bank v. City of New York*, Sup. N.Y., Korn, J., J.K.L.J., 12/5/73, p. 8; *Gilman v. Municipal Assistance Corporation* for the City of

New York, et al., Sup. N.Y., Ind. #1569/77, Korn, J., memo dec. dated 2/2/77). This court concurs in the views and reasoning expressed by Mr. Justice Korn in the above cited memorandum decisions. Plaintiffs at bar furnish no compelling grounds which would warrant, in this case, a departure from the conclusions reached in the above-cited cases as to the constitutionality and validity of the legislation in question.

Some comment, however, may be in order with respect to a contention advanced by plaintiffs in the case at bar which may not have been urged in the above-cited cases and which, in any event, was not dealt with in the memorandum decisions rendered in those cases, namely, that one of the terms of the contract between the defendant City and the plaintiffs, as purchasers of City bonds, was an obligation on the part of the City to maintain a balanced budget, and that the failure to provide a balanced budget constitutes an impairment of the obligations of the contract and a violation of the provisions of Article VIII, section 2, of the State Constitution.

This court finds no merit in the foregoing contention. Plaintiffs have not satisfied the court that a balanced budget was intended as, and was understood to be, a term of the contract of indebtedness represented by the City bonds held by plaintiffs.

As to plaintiffs' claim that the failure of the City to provide a balanced budget was a violation of the provisions of Article VIII, section 2, of the State Constitution, it is plain that what the plaintiffs as City bond holders are entitled to, as provided in said section, is a compliance by the City with the requirement that there shall be a sufficient sum appropriated annually by the City for the payment of interest on, and redemption of the City's bonds, and that if such appropriation is not made, there is to be set apart and applied to such purposes a sufficient sum from the first revenues thereafter received by the City. It is

plainly to be perceived that compliance by the City with the foregoing requirement does not necessitate a balanced budget. Indeed, the priority of payment accorded to the City's bond holders in said section suggests that the right of the bondholders to payment of interest and payment in redemption of the bonds can be satisfied without regard to whether the City's budget is in balance, where sufficient revenues are realized by the City out of which payment to the bondholders can be made. Thus, the alleged failure of the City to provide a balanced budget does not constitute an impairment of the obligations of the City's contract with its bondholders, nor is it violative of the provisions of Article VIII, section 2, of the State Constitution.

Plaintiffs' motion for summary judgment is denied and the respective motions of the defendant City and of defendant MAC for summary judgment declaring sections 167 and 168 of the Laws of 1975 to be valid and constitutional are granted.

Settle judgment.

J. S. C.

Appendix B

EXCERPTS FROM NEW YORK CITY AND NEW YORK STATE STATUTES

REPEAL OF NEW YORK CITY SALES TAX

(L. 1975 c. 168 §4)

(f) On the first day of the first month following the month in which a municipal assistance corporation is created under article ten of the public authorities law[1], any taxes imposed pursuant to this section by the city in aid of which such corporation was created and, except as hereinafter provided for in subdivision (h) *of this section, the power of such city to adopt and amend local laws, ordinances or resolutions imposing taxes pursuant to the authority of such section shall, notwithstanding any provision of article twenty-nine of this chapter[2] to the contrary, be suspended until all the notes and bonds of such municipal assistance corporation shall have been fully paid and discharged together with interest thereon and interest on unpaid installments of interest.*

IMPOSITIONS OF SALES TAX IN CITIES "OF ONE MILLION OR MORE".

(L. 1975 c. 168 §2)

§1107. *Temporary municipal assistance sales and compensating use taxes for cities of one million or more.*

(a) *General. On the first day of the first month following the month in which a municipal assistance corporation is created under article ten of the public authorities law*[1] for a city of one million or more, in addition to the taxes imposed by sections eleven hundred five and eleven hundred ten, there is hereby imposed on such

date, within the territorial limits of such city, and there shall be paid, additional taxes, at the rate of four percent, which except as provided in subdivision (b) of this section, shall be identical to the taxes imposed by sections eleven hundred five and eleven hundred ten. Such sections and the other sections of this article, including the definition and exemption provisions, shall apply for purposes of the taxes imposed by this section in the same manner and with the same force and effect as if the language of those sections had been incorporated in full into this section and had expressly referred to the taxes imposed by this section.

PAYMENT OF SALES TAX TO MAC
(L. 1975 c. 168 §7)

§92-d. *Municipal assistance tax fund*

1. There is hereby established in the custody of the comptroller a special fund to be known as the municipal assistance tax fund. Within such fund, there is hereby established a special account for each municipal assistance corporation created under article ten of the public authorities law.

2. Such fund shall consist of the revenues derived from municipal assistance sales and compensating use taxes imposed by sections eleven hundred seven and eleven hundred eight of the tax law.

* * *

6. Upon receipt by the comptroller of a certificate or certificates from the chairman of a municipal assistance corporation that such corporation requires a payment or payments in order to comply with any agreement with the holders of its notes and bonds and to carry out its corporate purposes, including the maintenance of the capital reserve fund, from the special account established for such corporation, each of which certificates shall specify the required payment or payments and the date when the payment or payments is required, the comptroller shall pay from such special account on or before the specified date or within thirty days after such receipt, whichever is later, to such corporation, as the chairman thereof may direct in any such certificate, the amounts or amounts so certified.

CREATION OF MAC
(L. 1975 c. 169)

§3033. *Creation of the municipal assistance corporation for the city of New York; authorized indebtedness*

1. There is hereby created the municipal assistance corporation for the city of New York. The corporation shall be a corporate governmental agency and instrumentality of the state constituting a public benefit corporation. It shall have the powers, privileges and duties of a corporation under title two of this article and under this title. The corporation shall continue for a term of one year after all its liabilities have been fully paid and discharged. Upon the termination of the existence of the corporation, all of its rights and property shall pass to and be vested in the state.

APPENDIX C

COURT OF APPEALS
State of New York

WILLIAM J. QUIRK and LEON EDWARD WEIN,

Plaintiffs-Appellants,

-against-

MUNICIPAL ASSISTANCE CORPORATION FOR THE CITY OF NEW YORK and THE CITY OF NEW YORK,

Defendants-Respondents.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that WILLIAM J. QUIRK and LEON EDWARD WEIN, the appellants above-named, hereby appeal to the Supreme Court of the United States from the final judgment of the Court of Appeals of the State of New York, affirming the declaratory judgment of the Supreme Court of the State of New York that the provisions of Chapters 168 and 169 of the Laws of 1975 of the State of New York, as amended, are valid and constitutional and do not violate Art. I, § 10 of the Constitution of the United States, which judgment of the Court of

Appeals was entered herein on April 26, 1977.
This appeal is taken pursuant to 28 U.S.C. §1257 (2)

LEON EDWARD WEIN
Petitioner pro se and
Counsel for petitioners

FILED
'77 MAY 20, PM 2:08
Kings County Clerk's Office
FEE
RP

IN THE

Supreme Court of the United States

October Term, 1977

Supreme Court, U. S.
FILED
AUG 31 1977
MICHAEL RODAK, JR., CLERK

No. 77-114

WILLIAM J. QUIRK and LEON E. WEIN,
Appellants,

against

MUNICIPAL ASSISTANCE CORPORATION FOR THE CITY OF NEW YORK and THE CITY OF NEW YORK,
Appellees,

and

LOUIS J. LEFKOWITZ,
Attorney General of the State of New York,
Intervenor-Appellee.

On Appeal from the Court of Appeals of the State of New York

MOTION TO DISMISS OR AFFIRM

SIMON H. RIFKIND
Attorney for Appellee
Municipal Assistance Corporation
For The City of New York
345 Park Avenue
New York, New York 10022
(212) 644-8000

Of Counsel:

PAUL, WEISS, RIFKIND, WHARTON & GARRISON
ALLEN L. THOMAS
MAX GITTER
RICHARD M. ZUCKERMAN

HAWKINS, DELAFIELD & WOOD
WILLIAM B. LAWLESS
DONALD J. ROBINSON
ALLEN P. ROSINY

TABLE OF CONTENTS

	PAGE
Question Presented	2
Constitutional and Statutory Provisions Involved	4
Statement of the Case	4
The MAC Legislation	4
The Sales and Stock Transfer Taxes	6
New York City General Obligation Bonds	8
Proceedings Below	9
There is no substantial federal question	10
A. The Court of Appeals' construction of New York law is dispositive; it is not "manifestly wrong"	10
1. The bonds themselves do not covenant that sales and stock transfer taxes will be available for payment of New York City bondholders	12
2. The "first revenues" clause of the State Constitution does not require that particular taxes will be maintained	15
3. There was no "balanced budget" covenant	18
4. Appellants' other state law claims are also without merit	20
B. The Court of Appeals followed precedents of this Court	22
Conclusion	25
Appendix	*following* 25
Addendum of Constitutional and Statutory Provisions	*separately printed*

TABLE OF AUTHORITIES

Cases:

PAGE

Adams Mfg. Co. v. Storen, 304 U.S. 307 (1938) 12
Appleby v. New York, 271 U.S. 364 (1926) 10–11
Atlantic Coast Line R.R. Co. v. Phillips, 332 U.S. 168 (1947) 11–12

Cardinale v. Louisiana, 394 U.S. 437 (1969) 20

Flushing National Bank v. Municipal Assistance Corp., 40 N.Y.2d 731, 390 N.Y.S.2d 22 (1976) 4, 13–14

Gilman v. Municipal Assistance Corp., Index No. 1589/77 (N.Y. Sup.Ct., N.Y. Co.), *aff'd*, 41 N.Y.2d 644, 394 N.Y.S.2d 842 (1977) 10

Hale v. State Bd. of Assessment & Review, 302 U.S. 95 (1937) 11

Interstate Pipe Line Co. v. Stone, 337 U.S. 662 (1949) 11

Jefferson Branch Bank v. Skelly, 66 U.S. (1 Black) 436 (1861) 11

Keefe v. Clark, 322 U.S. 393 (1944) 23–24

Mount Pleasant v. Beckwith, 100 U.S. (10 Ott.) 514 (1879) 24–25
Muhlker v. N.Y. & Harlem R.R. Co., 197 U.S. 544 (1905) 12

New York Rapid Transit Corp. v. City of New York, 303 U.S. 573 (1938) 12

PAGE

Patterson v. Carey, 41 N.Y.2d 714, 395 N.Y.S.2d 411 (1977) 4
Phelps v. Bd. of Education, 300 U.S. 319 (1937) 12
Port of Mobile v. Watson, 116 U.S. 289 (1886) 24–25

Quirk v. Municipal Assistance Corp., 41 N.Y.2d 644, 394 N.Y.S.2d 842 (1977) ..... *passim*

Sacramento Municipal Utility Dist. v. Spink, 145 Cal. App.2d 568, 303 P.2d 46 (Dist. Ct. App. 1956) 14
Sauer v. City of New York, 206 U.S. 536 (1907) 12
State v. County of Citrus, 116 Fla. 676, 157 So. 4 (1934) 13–14

Tacon v. Arizona, 410 U.S. 351 (1973) 20

United States Trust Co. v. New Jersey, 431 U.S. 1 (1977) 11, 22

Van Derzee v. City of Long Beach, 265 App. Div. 1059, 39 N.Y.S.2d 401 (2d Dep't 1943) 17
Von Hoffman v. City of Quincy, 71 U.S. (4 Wall.) 535 (1866) 22–23

Wein v. City of New York, 36 N.Y.2d 610, 370 N.Y.S. 2d 550 (1975) 12, 21

Constitutional Provisions:

PAGE

United States Constitution
Article I, §10 ..... *passim*

New York State Constitution
Article 8, §1 21
Article 8, §2 ..... *passim*
Article 8, §10 22
Article 8, §12 ..... 17, 22
Article 9, §2(c)(8) 16
Article 10, §5 21

The MAC Legislation:

New York State Municipal Assistance Corporation Act, L. 1975, Ch. 168 ..... *passim*

Municipal Assistance Corporation For The City of New York Act, L. 1975, Ch. 169 ..... *passim*

McKinney's Consolidated Laws of New York:

Public Authorities Law
Section 3002 5
Sections 3010-3013 5
Section 3014 6
Section 3016 21
Section 3035(3) 6
Section 3036 5
Section 3037 6
Section 3038 6
Section 3038(4) 19

State Finance Law
Section 92-b 5
Section 92-d 5

PAGE

Tax Law
Section 1105 5
Section 1107 5
Section 1108 5
Section 1210(f)-(i) 6
Section 1212-A(f)-(i) 6

McKinney's Session Laws of New York:

L. 1934, Ch. 873 ..... 6, 15
L. 1947, Ch. 278 6
L. 1955, Ch. 215 7
L. 1965, Ch. 91 7
L. 1965, Ch. 93 7
L. 1974, Ch. 368 7

New York City Charter:

Sections 116-128 18
Section 1516 19

Other Authorities:

Final Report of the New York State Charter Revision Commission For New York City (1975) 19

IN THE

Supreme Court of the United States

October Term, 1977

No. 77-114

WILLIAM J. QUIRK and LEON E. WEIN,
Appellants,

against

MUNICIPAL ASSISTANCE CORPORATION
FOR THE CITY of NEW YORK and
THE CITY OF NEW YORK,
Appellees,

and

LOUIS J. LEFKOWITZ,
Attorney General of the State of New York,
Intervenor-Appellee.

On Appeal from the
Court of Appeals of the State of New York

MOTION TO DISMISS OR AFFIRM

Appellee Municipal Assistance Corporation For The City of New York respectfully moves, pursuant to Rule 16 of the Rules of the Court, to dismiss this appeal on the ground that it does not present a substantial federal question or, in the alternative, to affirm the judgment below on the ground that the question presented is so unsubstantial as not to warrant further argument.

Question Presented

Appellants *pro se,* holders of New York City general obligation bonds who have been timely paid all amounts due on those bonds, seek to invalidate New York State legislation which created the Municipal Assistance Corporation For The City of New York ("MAC"), a corporate governmental agency of the State.

In their Jurisdictional Statement, appellants cite numerous provisions of the New York State Constitution (and a great deal of inaccurate matter outside the record), and assail diverse provisions of the MAC statutes and other legislation, which have nothing to do with this case.

The claim raised below and now properly before this Court is far more simple and narrow: Appellants claim that provisions of the MAC legislation breach an *implied* covenant of their contract as City bondholders and therefore violate the Contracts Clause, Art. 1, Sec. 10, of the United States Constitution. The challenged provisions (a) suspend the authority of New York City to impose a local sales tax; (b) impose a new State sales tax; and (c) provide for the appropriation by the State Legislature of the proceeds of that new State sales tax, as well as the State stock transfer tax, to MAC.

The issues posed below were thus: (a) was there an undertaking to maintain these taxes to pay the City's general obligation bonds, and (b) if so, did the Legislature unconstitutionally impair that undertaking by enacting the MAC legislation.

In a unanimous, *per curiam* decision, the New York Court of Appeals held that there was no undertaking. It said:

> "There is no requirement, either in the State Constitution or in any undertaking in the city bonds, that the diverted taxes be continued directly payable to the city. There is not, and never has been, an agreement, express or implied, that the revenues of these taxes be used to repay city bonds." (A 1, *Quirk* v. *Municipal Assistance Corp.,* 41 N.Y. 2d 644, 646, 394 N.Y.S. 2d 842, 843 (1977)).

Thus, the decision below rested entirely on a threshold interpretation of New York State law.

In these circumstances, the sole question now presented is:

> *Whether the New York Court of Appeals erred in ruling, as a matter of New York law, that there is no express covenant with New York City bondholders that the proceeds of the City sales tax and the State stock transfer tax will be available to pay City bondholders, and that no such covenant should be implied from the bonds, the New York State Constitution, or other provisions of State and local law.*

The Court of Appeals' construction of New York law is dispositive. Prior rulings of this Court establish that such determinations of state law by the state's highest court are to be respected "unless manifestly wrong"—flatly inconsistent with prior state court decisions or a "palpable evasion" of the Contracts Clause. *See* pp. 10-12, *infra.* The decision below of the New York Court of Appeals—a court

which has not hesitated to invalidate State legislation in order to enforce the Contracts Clause and the rights of municipal security holders*—is correct, and certainly not "manifestly wrong."

Accordingly, this appeal does not raise a substantial federal question warranting full review and should be dismissed.

Constitutional and Statutory Provisions Involved

The relevant provisions of the United States Constitution, the Constitution of the State of New York, and the MAC legislation are reproduced in a separate Addendum of Constitutional and Statutory Provisions, filed with the Clerk and cited hereinafter as "Add."**

Statement of the Case

The MAC Legislation

In response to New York City's grave fiscal crisis, in June, 1975, the New York State Legislature created MAC to assist New York City "to provide, without interruption, services essential to [its] inhabitants while meeting [its] obligations to holders of [its] outstanding securities"

* *See, e.g., Patterson* v. *Carey,* 41 N.Y.2d 714, 395 N.Y.S.2d 411 (1977) (invalidating, as an impairment of contract, legislation which, by rescinding a toll increase, violated a bond covenant); *Flushing National Bank* v. *Municipal Assistance Corp.,* 40 N.Y.2d 731, 390 N.Y.S.2d 22 (1976) (invalidating, under State law, a moratorium on actions to enforce New York City short-term notes).

** Other references herein are to the Jurisdictional Statement (JS), the Appendix to the Jurisdictional Statement (A), and the Record before the New York Court of Appeals (R).

(Add. 4, Pub. Auth. Law, §3002).* The legislation empowered MAC to render financial assistance to the City by selling its own bonds and notes and paying the net proceeds of such sales to the City, and by issuing its own bonds and notes in exchange for outstanding short-term City obligations (Add. 6-12, Pub. Auth. Law §§3010-13).

The Legislature made available certain state revenues to MAC to pay the principal and interest on its obligations, as follows: A new New York State sales and use tax, of four per cent, was imposed, to be collected within New York City** (Add. 16-21, Tax Law, §§1107-1108). The proceeds of the new State sales and use tax are collected by the State and payable, upon appropriation, to MAC (Add. 29-32, Pub. Auth. Law, §3036; Add. 22-26, State Fin. Law, §§92-b, 92-d). Any surplus proceeds, not required by MAC, are paid to New York City (Add. 25, State Fin. Law, §92-b(3)). If the sales tax proceeds are insufficient, the deficiency is made up, also upon appropriation, with revenues of the State stock transfer tax (Add. 22-25, State Fin. Law, §92-d).† At the

* MAC was established through two acts of the Legislature: (1) the New York State Municipal Assistance Corporation Act, L. 1975, Ch. 168 (Add. 3), which authorizes the creation of municipal assistance corporations generally, provides for their funding, and sets forth their general structure and powers and (2) the Municipal Assistance Corporation For The City of New York Act, L. 1975, Ch. 169 (Add. 26), which specifically created MAC.

These statutes added to and amended the Public Authorities Law, the Tax Law, and the State Finance Law of New York.

** This tax is in addition to a pre-existing statewide New York State sales and use tax of four per cent. (Tax Law, §1105.) Sales in New York City are thus subject to a total State tax of eight per cent.

† Amendments to the MAC legislation added certain State per capita aid as a revenue source for certain MAC obligations (Add. 43-45). Such revenues are not involved in this litigation.

same time, a prior legislative grant to New York City of authority to impose its own sales and use taxes was suspended (Add. 19-21, Tax Law, §§1210(f)-(i), 1212-A(f)-(i)).

To promote the City's fiscal responsibility, MAC's authorization to provide assistance to the City was conditioned upon the City's adoption of specified budgetary and accounting practices. In addition, the City's power to contract short-term indebtedness was restricted (Add. 13, 29, 32-38, Pub. Auth. Law, §§3014, 3035(3), 3037, 3038).

Since its creation, MAC has sold to the public and others more than $3.6 billion of its bonds, and paid all the net proceeds of such sales to the City. By exchanges of MAC bonds for publicly-held New York City short-term notes, MAC has relieved the City of an additional burden of $1 billion.

The Sales and Stock Transfer Taxes

New York City's authority to impose a sales tax was derived from the State Legislature. In deciding to suspend the City's authority to impose that tax, and to provide for appropriation of the State stock transfer tax revenues to MAC, the State Legislature identified revenue sources which have been continually revised to meet the changing needs of the City and State.

New York City was first authorized by the State Legislature to impose a local sales tax, on a temporary basis, in 1934, with the proceeds to be applied *only* for relief (Session Laws of the State of New York, L. 1934, Ch. 873). The City was not authorized to apply sales tax proceeds for general purposes until 1947 (L. 1947, Ch. 278), and not

until 1955 was it authorized to impose such a tax for other than a fixed period of years (L. 1955, Ch. 215). The City's power to impose local sales taxes has been enlarged, reduced, or otherwise modified in virtually every State legislative session since the first enactment. In 1965, indeed, a portion of the City sales tax was "diverted" to the State when the Legislature reduced the City's authority to impose a sales tax from four per cent to three per cent, and imposed a State sales tax (L. 1965, Ch. 93).*

The stock transfer tax has existed since 1909 as a *State* tax, and until July 1, 1965, its proceeds were appropriated for general *State* purposes. Not until 1965 was the State law amended to provide that stock transfer tax revenues "be appropriated to the city of New York," or, to use appellants' parlance, "diverted" to the City. And such appropriation was simply "for the support of local government" (L. 1965, Ch. 91).

Neither by express direction nor implication were the proceeds of either the sales tax or stock transfer tax ever pledged to bondholders. Thus, unlike the City's real estate tax which, as discussed below, is the principal and constitutionally-protected source of payment for City bonds, neither the sales tax nor the stock transfer tax could be termed a traditional source of revenue for payment of City bonds.

To put these taxes in overall context: in fiscal 1974-75, prior to the MAC legislation, the City's sales tax (one of

* In addition, in 1974, when the State Legislature authorized a one per cent increase in the City sales tax to four per cent, it limited the term of the increase to one year (L. 1974, Ch. 368). Thus, the City sales tax was scheduled to be reduced to three percent on June 30, 1975, which reduction was superseded by the MAC legislation.

seventeen local taxes) yielded about $800 million, or less than seven per cent of the City's total revenues of more than $12 billion. Revenues from the stock transfer tax in that year were about $200 million, or less than two per cent of the City's revenues. In contrast, City real estate tax receipts were nearly $3 billion, and federal and State grants totaled approximately $5 billion (R 42).

Since its inception, MAC has utilized substantially less than the total collections from the new State sales tax, and it has not utilized any portion of the State stock transfer tax revenues. The remaining proceeds of the sales tax, and all of the proceeds of the stock transfer tax, have been paid to New York City.

New York City General Obligation Bonds

Because appellants assert that the MAC legislation impairs the contract represented by their bonds, the starting point for analyzing their claims must be the bonds themselves. A copy of a specimen New York City general obligation bond (R 34-35) is reproduced as an Appendix hereto.

The bond contains the following pledge:

> "The faith, credit and taxing power of The City of New York are hereby irrevocably pledged for the punctual payment of principal of and interest on this bond according to its terms."

And an opinion of legal counsel on the reverse side of the bonds explains that the bonds

> "constitute valid and legally binding obligations of the City of New York, and the said City has power and is obligated to levy *ad valorem* taxes for the payment of said bonds and the interest thereon *upon all real property* within said City, subject to taxation by said City, without limitation of rate or amount." (emphasis added.)

Thus, the only reference to a specific tax is to an obligation to levy a real estate tax, unlimited in rate or amount. There is no mention of a sales tax or a stock transfer tax.

Throughout its fiscal crisis, the City has made all interest and principal payments on its bonds.

Proceedings Below

Appellants' complaint (R 10-20), filed in January, 1977, asserts three causes of action, each seeking a declaration that the MAC legislation impaired the contract represented by their New York City bonds, in violation of Article 1, Sec. 10 of the United States Constitution.

First, appellants allege that their bond contract contained a "term" to the effect that New York City had authority to impose a sales tax.* They assert that the MAC legislation, insofar as it "diverts" revenues of the former City sales tax to MAC, violates this alleged term (R 11-16). Second, appellants assert that the appropriation of proceeds of the State stock transfer tax to MAC violates their bond contract, because these proceeds were previously appropriated to New York City (R 16-18).** Third, appellants allege that City budget deficits in 1975-76 and 1976-77 and the MAC legislation somehow violate provisions of the City Charter which allegedly require the City to maintain a balanced budget (R 18-19).†

---

* The bond has no such "term." *See* pp. 12-15, *infra*.

** There is no pledge of these revenues in the bond contract. *See* pp. 12-15, *infra*.

† There was no requirement, prior to the MAC legislation, that the City maintain a balanced budget. *See* pp. 18-19, *infra*.

On cross-motions for summary judgment, the New York Supreme Court, Kings County, granted defendants judgment declaring the MAC legislation constitutional. Appellants took a direct appeal to the Court of Appeals of the State of New York, where the case was heard and decided together with a companion case raising essentially the same issues.*

The Court of Appeals affirmed, in a *per curiam* opinion which emphasizes that the real estate tax provides the essential security for payment of City bondholders. The opinion concludes:

> "Plaintiffs' thesis rests on an untenable contention, namely, that city bondholders were entitled to rely on continued collection of the now diverted taxes. Nowhere, however, not in the State Constitution and not in the bonds themselves, is there any requirement that collection of [these] particular taxes be continued. As a consequence, there is no impairment of obligation of contract under the Federal Constitution" (A 3, 41 N.Y. 2d at 647-8).

There is no substantial federal question.

A. The Court of Appeals' construction of New York law is dispositive; it is not "manifestly wrong."

Appellants' contention that their bond contract was impaired in violation of the Contracts Clause raises three questions:

> "first, was there a contract, second, what was its proper construction and effect, and, third, was its obligation impaired by subsequent legislation as enforced by the state court?" *Appleby* v. *New York,* 271 U.S. 364, 379 (1926).

* *Gilman* v. *Municipal Assistance Corp.,* Index No. 1589/77 (N.Y. Sup. Ct., N.Y. Co.). The plaintiff in *Gilman* has not taken an appeal to this Court.

The decision of the Court of Appeals rested on a determination of the first question—is there a contractual promise of the sort alleged by appellants. The Court of Appeals held "no."*

In so holding, the Court of Appeals was interpreting New York law—the provisions of the State Constitution and local law which allegedly imply the covenant asserted by appellants. To be sure, where a claim is asserted under the Contracts Clause, this Court may itself review a state court determination of that state's law to ensure, as Justice Reed said, that the state court has not engaged in "*a palpable evasion* for avoiding a contrary ruling under federal law." *Interstate Pipe Line Co.* v. *Stone,* 337 U.S. 662, 671 (1949) (Reed, J., dissenting on other grounds; emphasis added). *See also Jefferson Branch Bank* v. *Skelly,* 66 U.S. (1 Black) 436, 443 (1861).

However, as this Court held in *Hale* v. *State Bd. of Assessment & Review,* 302 U.S. 95, 100-101 (1937):

> "we lean toward agreement with the courts of the state, and accept their judgment as to such matters *unless manifestly wrong.*" (emphasis added.)

This "manifest error" standard has been reaffirmed on numerous occasions. *See, e.g., Atlantic Coast Line R.R. Co.* v.

* The issue here, therefore, differs sharply from that in *United States Trust Co.* v. *New Jersey,* 431 U.S. 1 (1977), upon which appellants rely. In that case, the Court was faced with the question of what circumstances may justify legislative repeal of an express, conceded, contractual covenant. Here, the court below decided the different and antecedent question whether, under state law, the covenant alleged to be impaired exists at all.

Phillips, 332 U.S. 168, 171 (1947); *Adams Mfg. Co.* v. *Storen,* 304 U.S. 307, 315-316 (1938) (state court's interpretation to be followed unless "plainly wrong"); *New York Rapid Transit Corp.* v. *City of New York,* 303 U.S. 573, 593 (1938); *Phelps* v. *Bd. of Education,* 300 U.S. 319, 323 (1937) ("palpably erroneous").

Thus, this Court will intercede when the state's highest court either blatantly disregards the explicit terms of a contract or makes a clear departure from prior state decisions. *See, e.g., Muhlker* v. *N.Y. & Harlem R.R. Co.,* 197 U.S. 544, 570-571 (1905); *cf. Sauer* v. *City of New York,* 206 U.S. 536, 549 (1907) ("It is an essential part of the plaintiff's case that he should show that his contract *had been interpreted* in the manner he states"; emphasis added).

There is no occasion here for this Court to intercede.

The Court of Appeals' decision not only is consistent with its own prior interpretations of the New York Constitution,* but is, we submit, clearly correct. Its decision surely is not "manifestly wrong." We summarize below some of the principal reasons that support the Court of Appeals decision.

1. The bonds themselves do not covenant that sales and stock transfer taxes will be available for payment of New York City bondholders.

New York City bonds are "general obligation" bonds. As appellants acknowledge (JS 21), unlike "revenue

* For example, in *Wein* v. *City of New York,* 36 N.Y.2d 610, 370 N.Y.S.2d 550 (1975), the Court of Appeals upheld the validity of the Stabilization Reserve Corporation, a New York corporate body similar to MAC, against a variety of state constitutional challenges, including a number of claims repeated here.

bonds," general obligation securities do not pledge, identify, or depend upon any specific tax or revenue, apart from the real estate tax.

In accordance with Article 8, §2 of the New York State Constitution, the only pledge contained in New York City bonds is the pledge of "faith and credit." That section requires that:

> "no indebtedness shall be contracted by any . . . city . . . unless such . . . city . . . shall have pledged its faith and credit for the payment of the principal thereof and interest thereon."

As we have noted, there is no specific tax referred to in the bonds themselves, and the only tax referred to in the legal opinion appended to the bonds is the real property tax. This is in accordance with Article 8, §12 of the State Constitution, which prohibits the Legislature from restricting local power to tax real estate insofar as needed to pay debt.

As the courts of New York and other states have consistently held, the pledge of "faith and credit" is not a pledge of any particular revenues nor an agreement to maintain a particular tax. It is, rather, a pledge that the municipality "will use its resources *as may be authorized or required by law* for the prompt payment of the principal and interest." *State* v. *County of Citrus,* 116 Fla. 676, 694, 157 So. 4, 11 (1934) (emphasis added). The New York Court of Appeals previously noted:

> "[T]he effect of such pledge of 'full faith and credit' is not to create a general or special lien or charge upon the unspecified revenues, moneys or income of the obligor not therein specifically obligated to the pay-

ment of such bonds, but is to acknowledge an indebtedness for the amount of money received as a consideration for the bonds, which indebtedness will become enforceable in an ordinary action, should the special contractual obligation as embraced in the bond itself, fail." *Flushing National Bank* v. *Municipal Assistance Corp.*, 40 N.Y.2d 731, 735, 390 N.Y.S.2d 22, 25-26 (1976), quoting with approval, *State* v. *County of Citrus, supra.*

See also Sacramento Municipal Utility Dist. v. *Spink,* 145 Cal. App. 2d 568, 303 P.2d 46 (Dist. Ct. App. 1956) (upholding "diversion" of revenue stream, which had partially supported prior general obligation bonds, to secure a later issue of revenue bonds).

Thus, the pledge of faith and credit does not require that the State Legislature continue to permit New York City to impose a sales tax (or any other local tax, apart from the real estate tax) or continue to appropriate the proceeds of the State stock transfer tax to New York City.

Indeed, appellants recognize that issuance by a municipality of a general obligation bond cannot put the State Legislature into a fiscal straightjacket *vis-a-vis* its subdivisions. Appellants concede that "the legislature retains full power over taxation. Other than the real estate tax, any tax may be altered from time to time or repealed" (JS 26).

Appellants fail to recognize, however, that it *also* follows that the so-called "diversion" in the challenged MAC legislation is lawful. It is simply the Legislature's exercise, in succession, of its undoubted powers (a) to impose

its own State sales tax, to be collected in New York City;* (b) annually to appropriate receipts from that State tax, like receipts from any State tax, for any proper purpose, including appropriation to a State public benefit corporation such as MAC; and (c) to repeal or suspend the City's authority to impose a sales tax.

In short, the admission that there is legislative power to repeal the City sales tax is also necessarily a concession that a City bondholder has no vested right in it.

The Court of Appeals therefore correctly concluded, in this case:

> "In no way was the city ever committed to maintain sales tax revenues or stock transfer tax revenues for the benefit of its bondholders." (A 2, 41 N.Y.2d at 646-647.)

2. The "first revenues" clause of the State Constitution does not require that particular taxes will be maintained.

Appellants attempt to find in the "first revenues" clause of Article 8, §2, ¶4 of the State Constitution (Add. 1-2) an implied covenant that the City sales tax would be maintained. The New York Court of Appeals has construed the "first revenues" clause to provide

> "that unpaid bondholders for whom moneys have not been appropriated are entitled to have sufficient sums for repayment 'set apart from the first revenues thereafter received and . . . applied to such purposes' " (A 2-3; 41 N.Y.2d at 647).

---

* Indeed, the 1934 statute authorizing the City to impose a sales tax was phrased as a grant to New York City of authority to adopt such taxes as the Legislature would have power to impose (L. 1934, Ch. 873).

By its terms, the "first revenues" clause is triggered only if and when the City fails to appropriate funds to pay bondholders—an event which never here occurred.

Appellants, ignoring that condition precedent and the words "thereafter received," contend that the "first revenues" clause sowehow pledges to City bondholders the sales tax revenues which were being collected at the time the City issued its general obligation bonds. But nothing in Article 8, §2 pledges to a City bondholder any *particular* source of revenue or any particular tax, and nothing in that section requires the State to maintain a local sales tax. A city may impose and collect only such taxes as the State Legislature authorizes (N.Y.Const., Art. 9, §2(c)(8)). Therefore, the meaning of the word "revenues" in Article 8, §2—or in appellants' phrase "first lien on all City revenues" (JS 12)*—is such revenues as the City receives "thereafter," *i.e.*, after a failure to make an appropriation. A contention that it refers to all revenues receivable when the City issues a bond would be absurd: half of the City's revenues consist of federal and state grants which both governments regularly alter, amend, or fail to renew.

Moreover, appellants' contention is contrary to the only judicial decision, prior to this case, which construed the

* Appellants seize upon the label "first lien" by taking out of context a sentence from the Notice of Sale of City Bonds (R 37), and other matters outside the record including a letter to the editor written by two City officials (JS 14). In fact, the full contexts of the quotations cited by appellants convey no more than what the State Constitution says and means—*i.e.*, that only the City real estate tax, insofar as needed to pay indebtedness, is protected from legislative restriction or alteration.

At all events, a statement in a letter to the editor of a newspaper does not bind the State Legislature.

"first revenues" clause. In *Van Derzee* v. *City of Long Beach*, 265 App. Div. 1059, 39 N.Y.S.2d 401, 402 (2d Dept. 1943), the Appellate Division of the New York Supreme Court held that

> "[this] constitutional provision *neither establishes nor affects any substantive right* but deals only with a *remedy* afforded to the creditors of the city on its bonded indebtedness. . . ." (emphasis added).

Indeed, not only does the New York State Constitution give the Legislature full power to suspend or remove local taxes (other than the real estate tax), it gives the Legislature an affirmative responsibility to do so under appropriate circumstances—a power and responsibility it exercised in enacting the MAC legislation. Article 8, §12 of the State Constitution (Add. 2) provides:

> "*It shall be the duty of the legislature*, subject to the provisions of this constitution, *to restrict the power of taxation*, assessment, borrowing money, contracting indebtedness, and loaning the credit *of counties, cities, towns and villages*, so as to prevent abuses in taxation and assessments and in contracting of indebtedness by them. . . . *The legislature shall not, however, restrict the power to levy real estate taxes for the payment of interest on or principal of indebtedness theretofore contracted*" (emphasis added).

Thus, we do not contend, as appellants assert (JS 35), that the "first revenues" clause is "an empty provision" which could be rendered nugatory by legislative removal of all City revenues. The State Constitution expressly provides that the Legislature may not remove or restrict the power of the City to levy real estate taxes for the payment of debt. But at the same time the State Con-

situtions permits (and on occasion requires) the Legislature to alter the revenue or taxing powers of any city with respect to all other revenues—whether by repeal, modification, or "diversion."*

The Court of Appeals therefore properly rejected appellants' contentions concerning the "first revenues" clause, saying:

> "this 'first lien' on the city's revenues does not give bondholders the right to insist that any particular existing taxes be maintained or new ones imposed to produce those revenues. It only assures that out of the revenues which are collected, money must be provided to satisfy obligations to the bondholders." (A 3; 41 N.Y.2d at 647.)

3. There was no "balanced budget" covenant.

Appellants also contend that the City's budget deficits in 1975-76 and 1976-77 violate an implied covenant allegedly derived from

> "the New York Constitution and the City Charter (sections 116-128) [which] require the City to maintain a balanced budget" (JS 26).**

The New York Supreme Court, Kings County, found "no merit" (A 5) in appellants' argument, saying:

---

* To hold otherwise necessarily would invalidate numerous prior "diversions" of the City sales tax, the State stock transfer tax, and other revenues—"diversions" which have never before been questioned and which are clearly lawful. For example, whenever a City function is taken over by a public authority (*e.g.*, the Transit Authority), City "revenues" (*e.g.*, from sales of subway tokens) which could or would have been available for debt service on City bonds are "diverted." *See also*, p. *7*, *supra*.

** Appellants do not cite—and there does not exist—any provision of the New York State Constitution which requires (or even speaks to) a balanced budget for municipalities.

> "Plaintiffs have not satisfied the court that a balanced budget was intended as, and was understood to be, a term of the contract of indebtedness represented by the City bonds held by plaintiffs" (A 5).

The Court of Appeals apparently regarded appellants' argument as so insubstantial as not to warrant separate discussion in its opinion.

In fact, the City Charter did *not* require a balanced budget at the time the MAC legislation was enacted in June, 1975. To the contrary, a new Charter provision requiring a balanced budget was first adopted in November, 1975, precisely because, theretofore, the City Charter contained no such requirement.*

In any event, it would be absurd to contend that the MAC legislation in any way authorized, or commanded, or contributed to, City budget deficits. In the two-year period of budget imbalances about which appellants complain (fiscal 1975-76 and 1976-77), MAC *reduced* the drain on the City's cash—by $4.6 billion. And as to fiscal years which follow, the MAC legislation affirmatively requires that "the City shall . . . maintain a budget balanced in accordance with . . . accounting principles" (Add. 34-35, Pub. Auth. Law, §3038(4)).

---

* The new provision, the last sentence of Section 1516 of the New York City Charter, reads:

> "The [real estate] tax rate shall be such as to produce a balanced budget within generally accepted accounting principles for municipalities."

This provision was adopted upon recommendation of the State Charter Revision Commission for New York City. In its final report, the "summary of major charter *revisions*" (emphasis added) lists, as the very first revision:

> "1. The *budget shall be balanced* using the State Comptroller's accounting principles for municipalities." (R 36; emphasis in original).

4. Appellants' other state law claims are also without merit.

Appellants also recite a variety of New York State Constitutional provisions which they characterize as "bondholder safeguards, evaded by the creation of MAC" (JS 5-6). These additional "safeguards" were not properly raised as claims below, and are not properly before this Court.* As this Court held in *Tacon* v. *Arizona,* 410 U.S. 351, 352 (1973), "[w]e cannot decide issues raised for the first time here." This is especially true where the issues involve the construction of state statutes and the state constitution, *Cardinale* v. *Louisiana,* 394 U.S. 437, 439 (1969).

In any event, appellants' additional State law contentions are frivolous. Only two of their arguments even conceivably could be read to assert claims that the MAC legislation violates appellants' rights as City bondholders. And both of these arguments are based on seriously misleading readings of the New York State Constitution.

---

* Of the 10 "bondholder safeguards" listed in the Jurisdictional Statement, only two—(a) the "first revenues" clause (JS 12) and (b) the alleged "balanced budget" requirement (JS 12)—were the basis for allegations in the complaint and for appellants' arguments below.

Five of appellants' claims—that the MAC legislation allegedly evades (a) the "City debt limit" (JS 6), (b) a requirement that the "City can only borrow long-term for capital projects" (JS 6), (c) a limit on "maximum maturity" of City bonds (JS 7), (d) a provision requiring the City to make serial payments of principal on its bonds (JS 8), and (e) the "faith and credit" clause (JS 8)—were first adverted to by appellants, in passing, in the Court of Appeals. Of these, only the "faith and credit" argument, which was properly raised by the plaintiff in the companion case, was discussed in the Court of Appeals opinion.

Three of the claims—that the MAC legislation evades State Constitutional requirements that (a) provide that the City can only borrow short-term in anticipation of revenues or taxes (JS 7), (b) prohibit City liability on bonds of public corporations (JS 9) and (c) prohibit a gift or loan of City credit in aid of a public corporation (JS 11)—are asserted, for the first time, in this Court.

First, appellants seek to twist the prohibition of City liability on bonds of a public corporation into a prohibition of the payment of any "tax funds" to public corporations such as MAC (JS 9-11). The New York State Constitution provides no such thing. Instead, it states that

> "Neither the state nor any political subdivision thereof shall at any time be liable for the payment of any obligations issued by such a public corporation. . . ." (N.Y. Const., Art. 10, §5).

The MAC legislation fully complies with that provision. The MAC legislation (and all MAC bonds) expressly state that neither the City nor the State of New York is liable on MAC obligations (Add. 13, Pub. Auth. Law §3016).

Second, in arguing that the MAC legislation violates Art. 8, §1 of the New York State Constitution, which prohibits a gift or loan of any city's credit, appellants state that "the City's credit, its tax revenues, are the only thing behind MAC bonds" (JS 12). That is simply false: MAC bonds are not backed by the City's credit. Moreover, appellants misconstrue the settled State Constitutional meaning of the word "credit." *See Wein* v. *City of New York,* 36 N.Y.2d 610, 618, 370 N.Y.S.2d 550, 556 (1975).

Appellants' remaining arguments are, essentially, contentions that obligations issued by MAC would have been unlawful, if they had been issued by New York City. The fallacy behind all of these arguments is that the MAC obligations were not issued by New York City.

While they recite numerous State Constitutional provisions, appellants ignore the basic system of protection which the State Constitution affords City bondholders. The Court of Appeals noted:

"What is important is that city bondholders are protected by the State Constitution, which obligates the city to appropriate moneys for the repayment of city bonds, and to exceed normal real estate tax limitations in order to raise the necessary moneys (N.Y. Const., Art. VIII, §2, 10, 12). *In those provisions, which reflect the municipality's traditional source of revenue from its real estate tax levy, lies the constitutionally guaranteed protection of city bondholders.*" (A 2, 41 N.Y.2d at 647; emphasis added.)

As the Court of Appeals held (*Id.*), nothing in the MAC legislation affects, must less impairs, these bondholder protections.

• • • • •

To sum up: the New York Court of Appeals' construction of New York law is more than fully supported; it is in fact correct. It is certainly not "manifestly wrong." Accordingly, the appeal from that decision does not raise a substantial federal question and does not warrant plenary review, which would involve such additional issues as the reasonableness or necessity of the challenged legislation, as in *United States Trust Co.* v. *New Jersey, supra.*

B. The Court of Appeals followed precedents of this Court.

In an attempt to fashion a federal question, appellants assert, erroneously, that the Court of Appeals "failed to apply" this Court's precedents dealing with "repudiated promises" (JS 36).

Appellants rely first upon *Von Hoffman* v. *City of Quincy*, 71 U.S. (4 Wall.) 535 (1866), in which the state legislature attempted to nullify an explicit promise. In that

case, the enabling legislation which authorized the municipality to issue bonds also authorized a *special* tax to be set aside and used *only* for the payment of those bonds. There was thus a specific pledge of particular revenues, which led this Court to invalidate a later statute repealing that *special* tax.

Here, however, there was no specific (or other) pledge made with respect to sales tax or stock transfer tax revenues.

Von Hoffman is therefore inapposite. The relevant precedent is instead *Keefe* v. *Clark*, 322 U.S. 393, 396-397 (1944). In that case, appellant challenged an enactment permitting special districts to exempt certain properties from tax assessments. This enactment, it was claimed, impaired the obligation of outstanding bonds because the bondholders had a right to have taxes levied against *all* property previously taxed. This Court held:

"Before we can find impairment of a contract we must find an obligation of the contract which has been impaired. *Since the contract here relied upon is one between a political subdivision of a state and private individuals, settled principles of construction require that the obligation alleged to have been impaired be clearly and unequivocally expressed.* This rule of construction applies with special force in the case at bar, for the *interpretation of the bond contract urged by appellants would result in a drastic limitation upon the power of [the state] to enact legislation designed to remedy a situation obviously inimical to the interests of both municipal creditors and the general public.*" 322 U.S. at 396-397 (emphasis added).

Here, there obviously is nothing which "clearly and unequivocally express[es]" any convenant on the part of the

State or City to continue to maintain a City sales tax. The decision of the Court of Appeals that such a covenant should not be implied thus is supported, if not compelled, by *Keefe* v. *Clark*.

Appellants also rely on *Mount Pleasant* v. *Beckwith*, 100 U.S. (10 Ott.) 514 (1879), and *Port of Mobile* v. *Watson*, 116 U.S. 289 (1886), which involved the attempted total repudiation of municipal debt, and therefore have no relevance to the facts of this case. Both cases involved, as appellants concede, "dissolved town[s]" (JS 39)—bald legislative attempts to repudiate all municipal debt by abolishing the municipality which contracted the debt while "leav[ing] no adequate means for the payment of the bonds." 116 U.S. at 305.

The New York Legislature has not abolished the City of New York. Instead, it merely repealed one tax, the sales tax—which had produced less than seven per cent of the City's revenues—in a manner which enabled the City to receive more than five times the amount of sales tax revenues actually removed during the period of a major fiscal crisis.* The New York Legislature fully complied with the holdings of *Mount Pleasant* and *Port of Mobile*, for it preserved more than "adequate means" for repayment of City bonds: collections from the real estate tax produce three times the revenue needed to pay debt service on City bonds (R 41-42). And, as the Court of Appeals noted:

---

* The Court of Appeals noted the distinction:

> "A different case would be presented if, realistically, the city were stripped of all sources of revenue, other than the real estate tax, and its outcome would be, at this time, unpredictable (*cf. Mobile* v. *Watson*, 116 U.S. 289, 305)." (A 3; 41 N.Y.2d at 647.)

> "Section 12 of article VIII of the State Constitution prohibits the Legislature from restricting the power of a locality 'to levy taxes on real estate for the payment of interest on or principal of indebtedness theretofore contracted' " (A 3; 41 N.Y.2d at 647).

Not only is the amount "left" thus "adequate" to meet the obligations to City bondholders, but the "first revenues" clause of the New York Constitution

> "assures that out of the revenues which are collected, money must be provided to satisfy obligations to the bondholders." (*Id.*)

The MAC legislation, unlike the statutes in *Mount Pleasant* and *Port of Mobile*, is not an attempt to repudiate municipal debt; it is a plan expressly designed to enable the City to honor all of its obligations. And in fact all City bondholders, including appellants, have been paid.

Conclusion

For the foregoing reasons, the appeal should be dismissed for want of a substantial federal question or, in the alternative, this Court should summarily affirm the judgment of the Court of Appeals of the State of New York.

Respectfully submitted,

SIMON H. RIFKIND
Attorney for Appellee
Municipal Assistance Corporation
For The City of New York
345 Park Avenue
New York, New York 10022
(212) 644-8000

Of Counsel:

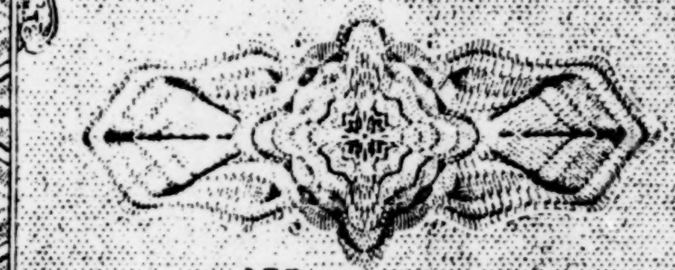
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON
ALLEN L. THOMAS
MAX GITTER
RICHARD M. ZUCKERMAN

HAWKINS, DELAFIELD & WOOD
WILLIAM B. LAWLESS
DONALD J. ROBINSON
ALLEN P. ROSINY

August 31, 1977

APPENDIX

The annexed specimen New York City general obligation bond is reproduced from the Record in the Court of Appeals of the State of New York (R 34-35).



SERIES SR/201-RB
FOR RAPID TRANSIT SYSTEM
ACQUISITION OF OMNIBUSES
AUTHORIZED ISSUE $4,000,000
ISSUE OF AUGUST 1, 1973
INTEREST PAYABLE SEMI-ANNUALLY
FEBRUARY 1 AND AUGUST 1
PRINCIPAL PAYABLE-
FEBRUARY 1,
INTEREST RATE 7%
PER ANNUM
DATED — AUGUST 1, 1973

No

THE CITY OF NEW YORK

SERIAL BOND

THE CITY OF NEW YORK, a municipal corporation of the State of New York, hereby acknowledges itself indebted and for value received promises to pay to

SPECIMEN

or registered assigns on the date specified hereon in lawful money of the United States of America at the office of the Comptroller of The City of New York, in The City of New York, the sum of

DOLLARS

and to pay to the registered owner hereof interest thereon from the date specified hereon or from the interest payment date next preceding the date of this bond, whichever date is later, at the rate specified hereon in like money at said office on the dates in each year specified hereon until such principal shall be paid. This Bond is one of a duly authorized issue of Bonds, the aggregate principal amount of which is stated hereon and is issued pursuant to resolutions duly adopted by the Board of Estimate of the City, and proceedings taken by other boards and officers of said City. The bonds of this issue are issuable as coupon bonds of the denomination of $5,000 and as registered bonds without coupons in the denomination of $1,000 and multiples thereof. This Bond is transferable by the registered holder or his legal representatives only upon presentation of the same at the Office of the Comptroller of The City of New York, together with a written transfer of title which shall be dated and signed by the registered holder or his legal representatives and it shall be duly acknowledged or proved and thereupon a like registered bond will be issued to the transferee in exchange therefor. It is hereby certified and recited that all conditions, acts and things required by the Constitution and Statutes of the State of New York to exist, to occur and to be performed, precedent to and in the issuance of this bond, exist, have occurred and have been performed, and that the issue of bonds of which this is a part together with all other indebtedness of the City of New York is within every debt and other limit prescribed by the Constitution and Laws of the State of New York. The faith, credit and taxing power of The City of New York are hereby irrevocably pledged for the punctual payment of the principal of and interest on this bond according to its terms.

IN WITNESS WHEREOF, The City of New York has caused this bond to be signed by its Mayor or his Clerk and by its Comptroller or his Deputy, and a facsimile of its common seal to be affixed and attested by its City Clerk or his Deputy as of the Bond date specified hereon.

ATTEST:

DEPUTY AND ACTING CITY CLERK.

MAYOR.

COMPTROLLER.

4-3364-113

CERTIFICATION

It is hereby certified that the following is a true and correct copy of the original manually signed opinion dated as of the date of delivery of and payment for the bonds described therein and on file in the office of the Comptroller of The City of New York, New York N. Y.

THIRD DEPUTY COMPTROLLER
The City of New York, New York, N.Y.

LEGAL OPINION

WOOD DAWSON LOVE & SABATINE
48 Wall Street
New York, New York 10005

Honorable Abraham D. Beame
Comptroller
The City of New York
Municipal Building
New York, New York 10007

Dear Sir:

THE CITY OF NEW YORK, NEW YORK,
SERIAL BONDS, ISSUE OF AUGUST 1, 1973

At the request of the purchasers of the within described bonds, we have examined into the validity of Serial Bonds, Issue of August 1, 1973, of The City of New York, New York, issued in coupon form (exchangeable for bonds in registered form), constituting part of a total authorized issue of $331,075,000 bonds, publicly offered and sold by said City July 24, 1973, dated August 1, 1973, of the denomination of $5,000 each, numbered and payable without option of redemption prior to maturity, and bearing interest payable semi-annually February 1 and August 1, as follows:

$4,000,000 Serial Bonds for Rapid Transit System, Acquisition of Omnibuses, numbered SR/201RB-1 through SR/201RB-800, maturing serially in numerical order $1,000,000 bonds on February 1 in each of the years 1975 through 1978, bearing interest at the rate of 7¼ per annum.

We have examined the Constitution and statutes of the State of New York, including the New York City Charter, and certified copies of proceedings of various boards and officers of said City authorizing the issuance of said bonds, also an executed bond of said series.

In our opinion said bonds have been duly authorized and issued in accordance with the Constitution and statutes of the State of New York, including the New York City Charter, and constitute valid and legally binding obligations of The City of New York, and the said City has power and is obligated to levy ad valorem taxes for the payment of said bonds and the interest thereon upon all real property within said City, subject to taxation by said City, without limitation of rate or amount.

It is also our opinion that the interest on said bonds is exempt from taxation by the United States of America under existing law and that under the laws of the State of New York said bonds and the interest thereon are exempt from taxation within said State.

Very truly yours,
WOOD DAWSON LOVE & SABATINE

REGISTERED

SERIES SR/201-RB
FOR RAPID TRANSIT SYSTEM
ACQUISITION OF OMNIBUSES
AUTHORIZED ISSUE $4,000,000
ISSUE OF AUGUST 1, 1973
INTEREST PAYABLE SEMI-ANNUALLY
FEBRUARY 1 AND AUGUST 1
PRINCIPAL PAYABLE-
FEBRUARY 1,
INTEREST RATE 7%
PER ANNUM
DATED — AUGUST 1, 1973

No

SERIAL BOND
OF THE
CITY OF NEW YORK

PAYABLE IN LAWFUL MONEY.

PRINCIPAL AND INTEREST
PAYABLE AT
THE OFFICE OF THE COMPTROLLER
OF THE
CITY OF NEW YORK
IN THE
CITY OF NEW YORK

IN THE

Supreme Court of the United States

October Term, 1977

Supreme Court, U. S.
FILED
AUG 31 1977
MICHAEL RODAK, JR., CLERK

No. 77-114

WILLIAM J. QUIRK and LEON E. WEIN,
Appellants,

against

MUNICIPAL ASSISTANCE CORPORATION FOR THE CITY OF NEW YORK and THE CITY OF NEW YORK,
Appellees,

and

LOUIS J. LEFKOWITZ,
Attorney General of the State of New York,
Intervenor-Appellee.

On Appeal from the Court of Appeals of the State of New York

ADDENDUM OF CONSTITUTIONAL AND STATUTORY PROVISIONS

SIMON H. RIFKIND
Attorney for Appellee
Municipal Assistance Corporation
for the City of New York
345 Park Avenue
New York, New York 10022
(212) 644-8000

Of Counsel:

PAUL, WEISS, RIFKIND, WHARTON & GARRISON
ALLEN L. THOMAS
MAX GITTER
RICHARD M. ZUCKERMAN

HAWKINS, DELAFIELD & WOOD
WILLIAM B. LAWLESS
DONALD J. ROBINSON
ALLEN P. ROSINY

TABLE OF CONTENTS

PAGE

UNITED STATES CONSTITUTION

Art. 1, §10, Cl. 1 ..... Add. 1

NEW YORK STATE CONSTITUTION

Art. 8, §2, ¶2, Cl. 1 ..... Add. 1

Art. 8, §2. ¶4 ..... Add. 1

Art. 8, §12 ..... Add. 2

THE MAC LEGISLATION

New York State Municipal Assistance Corporation Act, L. 1975, Ch. 168 ..... Add. 3

Municipal Assistance Corporation for the City of New York Act, L. 1975, Ch. 169 ..... Add. 26

PRINCIPAL AMENDMENTS TO THE MAC LEGISLATION

L. 1975, Ch. 868, §§9-12, 16, 20-21 ..... Add. 41

L. 1975, Ch. 870, §§16-18, 27 ..... Add. 52

L. 1975, Ch. 889 ..... Add. 58

L. 1975, Ch. 891 ..... Add. 60

L. 1977, Ch. 185 ..... Add. 62

L. 1977, Ch. 456 ..... Add. 65

The MAC Legislation, and the amendments thereto, are reproduced from *McKinney's Session Laws of New York,* © West Publishing Co., with permission.

CONSTITUTIONAL PROVISIONS

(Pages Add. 1 to Add. 2)

UNITED STATES CONSTITUTION

Art. 1, §10, Cl. 1:

"No State shall . . . pass any . . . Law impairing the Obligation of Contracts. . . ."

NEW YORK STATE CONSTITUTION

Art. 8, §2, ¶2, Cl. 1:

"No indebtedness shall be contracted by any . . . city . . . unless such . . . city . . . shall have pledged its faith and credit for the payment of the principal thereof and the interest thereon."

Art. 8, §2, ¶4:

"Provision shall be made annually by appropriation by every . . . city . . . for the payment of interest on all indebtedness and for the amounts required for (a) the amortization and redemption of term bonds, sinking fund bonds and serial bonds, (b) the redemption of certificates or other evidence of indebtedness (except those issued in anticipation of the collection of taxes or other revenues . . . and those issued in anticipation of the receipt of the proceeds of the sale of bonds theretofore authorized) contracted to be paid in such year out of the tax levy or other revenues applicable to a reduction thereof, and (c) the redemption of certificates or other evidence of indebtedness

issued in anticipation of the collection of taxes or other revenues, or renewals thereof, which are not retired within five years after their date of original issue. If at any time the respective appropriating authorities shall fail to make such appropriations, a sufficient sum shall be set apart from the first revenues thereafter received and shall be applied to such purposes. The fiscal officer of any . . . city . . . may be required to set apart and apply such revenues as aforesaid at the suit of any holder of obligations issued for any such indebtedness."

Art. 8, §12:

"It shall be the duty of the legislature, subject to the provisions of this constitution, to restrict the power of taxation, assessment, borrowing money, contracting indebtedness, and loaning the credit of . . . cities . . . so as to prevent abuses in taxation and assessments and in contracting of indebtedness by them. Nothing in this article shall be construed to prevent the legislature from further restricting the powers herein specified of any . . . city . . . to contract indebtedness or to levy taxes on real estate. The legislature shall not, however, restrict the power to levy taxes on real estate for the payment of interest on or principal of indebtedness theretofore contracted."

THE MAC LEGISLATION

(Pages Add. 3 to Add. 40)

Municipal Assistance Corporation Act

CHAPTER 168

An Act to amend the public authorities law, in relation to municipal assistance corporations; to amend the tax law, in relation to the municipal assistance sales and compensating use tax; and to amend the state finance law, in relation to the municipal assistance tax fund.

Approved and effective June 10, 1975.
Passed on message of necessity. See Const. art. IX, § 2(b)(2), and McKinney's Legislative Law § 44.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Article ten and sections three thousand through three thousand two of the public authorities law are hereby renumbered to be article eleven and sections thirty-five hundred through thirty-five hundred two, respectively, and a new article ten is hereby inserted therein, to read as follows:

ARTICLE 10—NEW YORK STATE MUNICIPAL ASSISTANCE CORPORATION ACT

Title
I. Short title; general definitions; legislative findings and statement of purposes.
II. General provisions relating to municipal assistance corporations.

TITLE I—SHORT TITLE; GENERAL DEFINITIONS; LEGISLATIVE FINDINGS AND STATEMENT OF PURPOSES

Sec.
3001. Short title.
3002. Legislative findings and statement of purposes.
3003. Definitions.

§ 3001. Short title

This article shall be known and may be cited as the "New York State Municipal Assistance Corporation Act".

§ 3002. Legislative findings and statement of purposes

It is hereby found and declared that, by reason of the severe economic and social dislocations of recent years, there has been a great increase in the need and demand for public services at a time when financing such services has become increasingly difficult, and that, due to a general decline in investor acceptance of local government securities and to almost unprecedented interest rates, a number of municipalities in this state have, despite the financial soundness of their obligations, recently faced increased difficulty in selling a sufficient amount of their securities to enable them to refund their outstanding obligations or to meet their cash requirements. For the immediate future, this increased difficulty has caused concern that such municipalities may be unable to provide, without interruption, many services essential to their inhabitants while also meeting their obligations to the holders of their outstanding securities as they come due. It is in the public interest and is the policy of this state to assist municipalities attempting to provide, without interruption, services essential to their inhabitants while meeting their obligations to the holders of their outstanding securities. The impairment of the credit of the municipalities within the state may affect the ability of the state to issue its own obligations at normal interest rates. Such effect is a matter of state concern. It is further declared that the state should exercise its power in the interest of such municipalities and should implement such policy by authorizing on behalf of each municipality which is found by the legislature to require the state's assistance and which expressly requests such assistance, the creation of a state instrumentality to be a body corporate and politic, having full powers to borrow money and to issue its bonds and notes for the purpose of providing to that municipality assistance sufficient to enable it to avoid the interruption of services essential to its inhabitants while meeting its obligations to the holders of its outstanding securities. It is further declared to be in the public interest and is the policy of this state that each such instrumentality shall provide financial assistance to a municipality only if that municipality agrees to make and observe such changes in its record keeping, accounting, budgeting and financial management practices as that instrumentality may be authorized, by the special law creating it, to require as a condition of providing financial assistance.

§ 3003. Definitions

As used in this article, the following words and terms shall have the following meanings unless the context shall indicate another or different meaning or intent:

1. "Municipality" means any city in the state.
2. "State" means the state of New York.
3. "Governor" means the governor of the state of New York.

4. "Comptroller" means the comptroller of the state of New York.
5. "Director of the budget" means the director of the budget of the state of New York.
6. "Legislature" means the legislature of the state of New York.
7. "Special law" means the special law of the legislature pursuant to which a municipal assistance corporation is created.
8. "Municipal assistance corporation" means a corporation created pursuant to section three thousand ten of this article.
9. "Bonds" and "notes" means bonds and notes, respectively, issued by a municipal assistance corporation pursuant to this article.
10. "Obligations" means bonds and notes.
11. "Amortized value" means for securities purchased at a premium above or a discount below par, the value as of any given date obtained by dividing the total amount of the premium or discount at which such securities were purchased by the number of days remaining to maturity on such securities at the time of such purchase and by multiplying the amount so calculated by the number of days having passed since the date of such purchase; and (a) in the case of securities purchased at a premium, by deducting the product thus obtained from the purchase price, and (b) in the case of securities purchased at a discount, by adding the product thus obtained to the purchase price.
12. "Revenues" means all federal or state aid, rents, fees, charges, payments and other income and receipts paid or payable to a municipal assistance corporation or for the account of a municipal assistance corporation, including any payment permitted or required to be made to such a corporation by this article.
13. "Board of directors" means the board of directors of a municipal assistance corporation.

TITLE II—GENERAL PROVISIONS RELATING TO MUNICIPAL ASSISTANCE CORPORATIONS

Sec.
3010. Creation; purposes and general powers of a municipal assistance corporation.
3011. Administration of a municipal assistance corporation.
3012. Issuance of notes and bonds of a municipal assistance corporation.
3013. Moneys of a municipal assistance corporation.
3014. Conditions on payment of funds to or purchase of obligations of municipality.
3015. Agreement with the state.
3016. State or state-aided municipality not liable on notes and bonds.
3017. Remedies of noteholders and bondholders.
3018. Notes and bonds as legal investments.
3019. Exemption from taxation.
3020. Actions against a municipal assistance corporation; indemnification.
3021. Assistance by state officers, departments, boards and commissions.

§ 3010. Creation; purposes and general powers of a municipal assistance corporation

A municipal assistance corporation shall be created by a special law of the legislature. The purposes of a municipal assistance corporation shall be to assist a municipality attempting to provide, without interruption, services essential to its inhabitants while meeting its obligation to the holders of its outstanding securities. Such assistance shall be provided through the issuance and sale of bonds and notes and paying or lending funds received from such sale to the municipality, or through the exchange of its obligations for obligations of the municipality. To carry out the aforesaid purposes, a municipal assistance corporation shall have, in addition to any powers specifically granted in the special act creating such municipal assistance corporation, the following powers: (1) to sue and be sued, (2) to have a seal and alter the same at pleasure; (3) to make and alter by-laws for its organization and internal management and, subject to agreements with noteholders or bondholders, to make rules and regulations governing the use of its property and facilities; (4) to make and execute contracts, leases, subleases and all other instruments or agreements necessary or convenient for the exercise of its powers and functions under this title; (5) to purchase real or personal property necessary and convenient for its corporate purposes; to execute and deliver deeds for real property held in its own name; and to sell or otherwise dispose of such real or personal property that, in the judgment of the municipal assistance corporation, is no longer necessary for its corporate purposes; (6) to appoint officers, agents and employees, prescribe their duties and qualifications and fix their compensation; (7) to commence any action to protect or enforce any right conferred upon it by any law, contract or other agreement; (8) subject to other provisions of law, to lend or otherwise transfer to the municipality for which the municipal assistance corporation was created such sums of money as are not required for other purposes; (9) to borrow money and to issue notes or bonds and to fund or refund the same, and to provide for the rights of the holders of its obligations; (10) subject to the provisions of any contract with noteholders or bondholders to invest any funds held in funds or accounts (except as hereafter provided), or any funds not required for immediate use or disbursement, at the discretion of the municipal assistance corporation, in obligations of the municipality being assisted or obligations of the state or federal government, obligations the principal of and interest on which are guaranteed by such municipality, the state or federal government, or obligations of agencies of such municipality, the state or federal government which may, from time to time, be legally purchased by savings banks of the state as investments of funds belonging to them or in their control and which have been approved by the comptroller or in a secured time deposit or other interest-bearing accounts secured by such obligations; provided, however, that no funds held in a capital reserve fund may be invested in obligations of or guaranteed by the municipality being assisted or

of any of its agencies; (11) subject to the provisions of any contract with noteholders or bondholders, to purchase notes or bonds of the corporation; (12) to procure insurance against any loss in such amounts and from such insurers as it deems desirable; (13) to engage the services of consultants on a contract basis for rendering professional and technical assistance and advice; (14) subject to the approval of the director of the budget to contract for and to accept any gifts or grants or loans of funds or property or financial or other aid in any form from the federal government or any agency or instrumentality thereof, or from any other source and to comply with the terms and conditions thereof; (15) as security for the payment of the principal of and interest on any bonds or notes so issued and any agreements made in connection therewith to pledge all or any part of its property or revenues; (16) to require any municipality to which assistance is provided under this article or any authority, agency or other body established by or on behalf of such municipality to make available all books and records, and to furnish copies of all financial statements, budgets, forecasts, projections and related information as may be requested; (17) to pay the expenses of the operation of the corporation, including but not limited to the repayment to the state of any advance to the corporation under any agreement between the corporation and the director of the budget out of any revenues available to the corporation and not otherwise pledged except the proceeds of its notes and bonds; and (18) to do any and all things necessary or convenient to carry out its purposes and exercise the powers expressly given and granted in this article or in the special act creating such municipal assistance corporation.

§ 3011. Administration of a municipal assistance corporation

1. Unless otherwise provided in a special law, a municipal assistance corporation shall be administered by a board of directors appointed by the governor with the advice and consent of the senate. The number and qualifications of such directors and their terms of office shall be set forth by a special law. The comptroller of the state of New York, or his representative shall be entitled to attend and participate in the meetings of the board of directors but shall have no vote.

2. The governor shall designate as chairman one of the directors appointed by him. The chairman shall preside over all meetings of the board of directors and shall have such other duties as may be prescribed by the board of directors.

3. The directors of a municipal assistance corporation shall serve without salary, but each director shall be entitled to reimburesment for his actual and necessary expenses incurred in the performance of his official duties as a director of the corporation and a per diem allowance of one hundred dollars when rendering services as such director, provided that the aggregate of such per diem allowance to any one director in any one fiscal year shall not exceed the sum of five thousand dollars. The directors, except as otherwise provided by law, may engage in private employment, or in a profession or business.

The directors of a municipal assistance corporation shall be deemed to be state officers for the purposes of sections seventy-three and seventy-four of the public officers law. Notwithstanding such provisions of the public officers law or of any other law, a municipal assistance corporation or any other state instrumentality (including any state agency, trust fund or public benefit corporation) may purchase from, sell to, borrow from, loan to, contract with or otherwise deal with any corporation, trust, association, partnership or other entity in which any director of such municipal assistance corporation has a financial interest, direct or indirect, and a municipal assistance corporation may engage in any such transaction with any other such state instrumentality with which any director of such municipal assistance corporation is affiliated as a state officer or employee, provided that such interest or affiliation is disclosed to such other state instrumentality and to the municipal assistance corporation, and, in the case of transactions with the municipal assistance corporation, such interest or affiliation is disclosed in the minutes of the board of directors of the municipal assistance corporation, and provided further that no director having such a financial interest or affiliation shall participate in any decision of the board of directors of the municipal assistance corporation authorizing or affecting such transaction.

4. A special law may provide for the appointment of one or more representatives to the board of directors. Such representative shall be entitled to receive notice of and to attend the meetings of the board of directors but shall not be entitled to vote. Such representative shall be entitled to reimbursement for his actual and necessary expenses incurred in the performance of his official duties as a representative to the corporation but shall not be entitled to a per diem allowance, unless specifically provided in the special law.

5. Notwithstanding any inconsistent provisions of law, general, special or local, no officer or employee of the state, or political division of the state, any governmental entity operating any public school or college or other public agency or instrumentality or unit of government which exercises governmental powers under the laws of the state, shall forfeit his office or employment by reason of his acceptance or appointment as a director, officer, employee or agent of a municipal astance corporation nor shall service as such director, officer, employee or agent of a municipal assistance corporation be deemed incompatible or in conflict with such office or employment.

6. Except as otherwise provided by special law, a majority of the whole number of authorized directors shall constitute a quorum for the transaction of any business and shall be required for the taking of any action or for the exercise of any power by the board of directors of a municipal assistance corporation. No vote at such meeting shall be cast by proxy. A municipal assistance corporation may delegate to one or more of its directors, or officers, agents and employees, such powers and duties as the directors may deem proper.

7. A municipal assistance corporation may appoint such officers, employees and agents as it may require, prescribe their duties and fix their compensation.

§ 3012. Issuance of notes and bonds of a municipal assistance corporation

1. (a) A municipal assistance corporation shall have the power and is hereby authorized from time to time to issue its notes and bonds in conformity with applicable provisions of the uniform commercial code, in such principal amounts as such corporation shall determine to be necessary within the limits of authorized indebtedness prescribed in the special law creating such corporation, to provide sufficient funds for achieving its corporate purposes, including the making of payments to or purchase of obligations of, the municipality for which the corporation was created, to make payments of interest on its notes and bonds, and to establish reserves to secure such notes and bonds.

(b) A municipal assistance corporation shall have the power, from time to time, to issue (i) notes to renew notes and (ii) bonds to pay notes, including the interest thereon and, whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and to issue bonds partly to refund bonds then outstanding and partly for any of its other corporate purposes. The refunding bonds may be exchanged for the bonds to be refunded or sold and the proceeds applied to the purchase, redemption or payment of such bonds.

(c) Except as may otherwise be expressly provided by a municipal assistance corporation, every issue of its notes and bonds shall be general obligations of the municipal assistance corporation payable out of any revenues of such corporation, subject only to any agreements with the holders of particular notes or bonds pledging any particular revenues.

(d) Such notes and bonds shall be authorized by resolution of a municipal assistance corporation, shall bear such date and shall mature at such time or times as such resolution may provide. The bonds may be issued as serial bonds or as term bonds or as a combination thereof. The notes and bonds shall bear interest at such rate or rates, be in such denominations and in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places and be subject to such terms of redemption as such resolution may provide.

(e) The notes or bonds of the municipal assistance corporation may be exchanged for obligations of the municipality being assisted or may be sold at such price or prices, at public or private sale, in such manner and from time to time as may be determined by such corporation, and the corporation may pay all expenses, premiums and commissions which it may deem necessary or advantageous in connection with the issuance and sale thereof. Subsequent to July 1, 1975, no notes or bonds of a municipal assistance corporation may be sold at private sale unless such sale and the terms thereof have been approved in

writing by (a) the comptroller where such sale is not to the comptroller, or (b) the director of the budget, where such sale is to the comptroller.

2. Any resolution authorizing any notes or bonds or any issue thereof may contain provisions, which shall be a part of the contract with the holders thereof, as to:

(a) pledging all or any part of the revenues to secure the payment of the notes or bonds or of any issue thereof, subject to such agreements with noteholders or bondholders as may then exist;

(b) pledging all or any part of the assets of the corporation to secure the payment of the notes or bonds or of any issue of notes or bonds, subject to such agreements with noteholders or bondholders as may then exist;

(c) the setting aside of reserves or sinking funds and the regulation and disposition thereof;

(d) limitations on the purposes to which the proceeds of sale of notes or bonds may be applied and pledging such proceeds to secure the payment of the notes or bonds of any issue thereof;

(e) limitations on the issuance of additional notes or bonds; the terms upon which additional notes or bonds may be issued and secured; and the refunding of outstanding or other notes or bonds;

(f) the procedure, if any, by which the terms of any contract with noteholders or bondholders may be amended or abrogated, the amount of notes or bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(g) vesting in a trustee or trustees such property, rights, powers and dutes [1] in trust as the corporation may determine, which may include any or all of the rights, powers and duties of the trustee appointed by the bondholders pursuant to this title, and limiting or abrogating the right of the bondholders to appoint a trustee under this title or limiting the rights, powers and duties of such trustee;

(h) the acts or omissions to act which shall constitute a default in the obligations and duties of the corporation to the holders of the notes or bonds and providing for the rights and remedies of the holders of the notes or bonds in event of such default, including the right to appointment of a receiver; providing, however, that such rights and remedies shall not be inconsistent with the laws of the state and the other provisions of this article; and

(i) any other matters of like or different character, which in any way affect the security or protection of the holders of the notes or bonds.

3. Any pledge made by a municipal assistance corporation shall be valid and binding from the time when the pledge is made. The revenues or property so pledged and thereafter received by the municipal assistance corporation shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against

the municipal assistance corporation, irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded or filed to protect such pledge except in the principal office of the municipal assistance corporation.

4. Neither the directors of a municipal assistance corporation nor any other person executing the notes or bonds of such corporation shall be subject to any personal liability or accountability by reason of the issuance thereof.

5. A municipal assistance corporation subject to such agreements with noteholders or bondholders as may then exist, shall have power out of any funds available therefor, to purchase notes or bonds of such corporation, which shall thereupon be cancelled.

6. Anything in this article ten to the contrary notwithstanding, any agreement or agreements with the holders of notes or bonds issued by any municipal assistance corporation created by or pursuant to any title of this article shall contain a clause stating in substance that any provision in this article or in any such agreement or agreements which relate to taxes imposed under article twelve or sections eleven hundred seven or eleven hundred eight of the tax law of the state or to the funds created by sections ninety-two-b and ninety-two-d of the state finance law shall be deemed executory only to the extent of the moneys available to the state in such funds from time to time and no liability on account thereof shall be incurred by the state beyond the moneys available in such funds.

7. In the discretion of the directors of a corporation the notes or bonds may be secured by a trust indenture by and between such corporation and a trustee, which may be any trust company or bank having the powers of a trust company in the state. Such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the noteholders or bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the corporation in relation to the exercise of its corporate powers and the custody, may provide by such trust indenture for the payment of the proceeds of the notes or bonds and the revenues to the trustee under such trust indenture or other depository, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. All expenses incurred in carrying out such trust indenture may be treated as a part of the operating expenses of the corporation. If the notes or bonds shall be secured by a trust indenture, the noteholders or bondholders shall have no authority to appoint a separate trustee to represent them.

8. Whether or not the notes and bonds are of such form and character as to be negotiable instruments under the terms of the uniform commercial code, the notes and bonds are hereby made negotiable instruments within the meaning of and for all the purposes of the uniform commercial code, subject only to the provisions of the notes and bonds for registration.

[1] So in original. Probably should read "duties".

§ 3013. Moneys of a municipal assistance corporation

1. All moneys of a corporation from whatever source derived may be paid to the treasurer of the corporation and be deposited forthwith in a bank or banks in the state designated by such corporation. The moneys in such account may be paid by the treasurer or other agent duly designated by the corporation on requisition of the chairman of the board of directors of the municipal assistance corporation or of such person or persons as the corporation may authorize to make such requisitions. All deposits of such moneys, may, if required by the corporation, be secured by obligations of the United States or of the state of New York of a market value equal at all times to the amount of the deposit and all banks and trust companies are authorized to give such security for such deposits, provided, however, that no funds or accounts held in the capital reserve fund may be invested in obligations of or guaranteed by the municipality being assisted or of any of its agencies. Such obligations may either be deposited with the treasurer or be held by a trustee or agent satisfactory to the corporation. The comptroller and his legally authorized representatives are authorized and empowered from time to time to examine the accounts and books of the corporation, including its receipts, disbursements, contracts, leases, sinking funds, investments and any other records and papers relating to its financial standing.

2. Subject to the provisions of subdivision three of this section, any moneys of a corporation, including the proceeds of notes or bonds, not required for immediate use may be invested in obligations of the municipality being assisted or in obligations of the state or federal government, obligations of the principal of and interest on which are guaranteed by such municipality, the state or federal government, or obligations of agencies of such municipality, of the state or of the federal government which may, from time to time, be legally purchased by savings banks of the state as investment of funds belonging to them, or in secured time deposit or other interest-bearing accounts secured by such obligations; provided, however, that no funds held in a capital reserve fund may be invested in obligations of or guaranteed by the municipality being assisted or of any of its agencies.

3. A corporation shall have power to contract with holders of any of its notes or bonds as to the custody, collection, securing, investment, and payment of any moneys of the corporation, of any moneys held in trust or otherwise for the payment of notes or bonds, and to carry out such contract. Moneys held in trust or otherwise for the payment of notes or bonds or in any way to secure notes or bonds or notes and deposits of such moneys may be secured in the same manner as moneys of the corporation, and all banks and trust companies are authorized to give such security for such deposits.

4. Subject to the provisions of any contract with noteholders or bondholders and to the approval of the comptroller, the corporation shall prescribe a system of accounts.

§ 3014. Conditions on payment of funds to or purchase of obligations of municipality

1. A corporation shall require, in connection with any payment of funds to, or purchase or exchange of the obligations of, the municipality being assisted, or the extension of other benefits thereto, that such municipality agree to observe such conditions with respect to expenditure control, record keeping, accounting, budgeting, financial management and other practices of such municipality as may be set forth in or permitted under the special law creating such corporation. Such agreement may provide such remedies for failure to observe such conditions as shall be necessary or desirable to accompiish the purposes of this article and such special law and are authorized or permitted thereunder.

2. Notwithstanding the provisions of any other law, general, special or local, inconsistent with the provisions hereof, any municipality may sell notes and bonds authorized to be issued pursuant to the local finance law by private sale to the corporation or to receive moneys from the corporation as herein provided and such municipality is hereby authorized to agree to and undertake any agreements made pursuant to the terms hereof.

§ 3015. Agreement with the state

The state does hereby pledge to and agree with the holders of any notes or bonds issued by a corporation under this act that the state will not limit or alter the rights hereby vested in such corporation to fulfill the terms of any agreements made with the said holders thereof, or in any way impair the rights and remedies of such holders until such notes and bonds together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully paid and discharged. A corporation is authorized to include this pledge and agreement of the state in any agreement with the holders of such notes or bonds.

§ 3016. State or state-aided municipality not liable on notes and bonds

The notes, bonds or other obligations of a municipal assistance corporation shall not be a debt of either the state or the municipality being assisted, and neither the state nor such municipality shall be liable thereon, nor shall they be payable out of any funds other than those of such corporation; and such notes and bonds shall contain on the face thereof a statement to such effect.

§ 3017. Remedies of noteholders and bondholders

1. In the event that a corporation shall default in the payment of principal of or interest on or sinking fund payment on, any issue of notes or bonds after the same shall become due, whether at maturity or otherwise or in the event that a corporation shall default in any agreement made with the holders of any issue of notes or bonds, the holders of twenty-five per centum in aggregate principal amount of the notes

or bonds of such issue then outstanding, by instrument or instruments filed in the office of the clerk of the county in which the principal office of such corporation is located and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of such notes or bonds for the purposes herein provided.

2. Such trustee may, and upon written request of the holders of twenty-five percentum in principal amount of such notes or bonds then outstanding shall, in his or its own name:

(a) by suit, action or proceeding in accordance with the civil practice law and rules, enforce all rights of the noteholders or bondholders, including the right to require the corporation to carry out any agreement with such holders and to perform its duties under this act;

(b) bring suit upon such notes or bonds;

(c) by action or suit, require the corporation to account as if it were the trustee of any express trust for the holders of such notes or bonds;

(d) by action or suit, enjoin any acts or things which may be unlawful or in violation of the rights of the holders of such notes or bonds;

(e) declare all such notes or bonds due and payable, and if all defaults shall be made good, then, with the consent of the holders of twenty-five per centum of the principal amount of such notes or bonds then outstanding, annul such declaration and its consequences.

3. The supreme court shall have jurisdiction of any suit, action or proceeding by the noteholder or bondholder trustee on behalf of such noteholders or bondholders. The venue of any such suit, action or proceeding shall be laid in the county in which the principal office of the corporation is located.

4. Before declaring the principal of notes or bonds due and payable, the trustee shall first give thirty days' notice in writing to the governor, the corporation and to the attorney general of the state.

§ 3018. Notes and bonds as legal investments

The notes and bonds of a corporation are hereby made securities in which all public officers and bodies of this state and all political subdivisions of the state and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks and savings associations, including savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or in other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them. Such notes and bonds are also hereby made securities which may be deposited with and may be received by all public officers and bodies of the state and all political subdivisions of the state and public corporations for any purpose for which the deposit of bonds or other obligations of the state is now or may hereafter be authorized.

§ 3019. Exemption from taxation

1. It is hereby determined that the creation of a corporation and the carrying out of its corporate purpose is in all respects a public and governmental purpose for the benefit of the people of the state and for the improvement of their health, safety, welfare, comfort and security, and that said purposes are public purposes and that a corporation will be performing an essential governmental function in the exercise of the powers conferred upon it by this act.

2. The property of a corporation and its income and operations shall be exempt from taxation.

3. The notes and bonds of a corporation issued pursuant to authority granted in the special act creating it or this act and the income therefrom and all its fees, charges, gifts, grants, revenues, receipts and other moneys received or to be received, pledged to pay, or secure the payment of, such notes or bonds shall at all times be free from taxation, except for estate and gift taxes and taxes on transfers.

§ 3020. Actions against a municipal assistance corporation; indemnification

1. An action against a municipal assistance corporation for death, personal injury or property damage or founded on tort shall not be commenced more than one year and ninety days after the cause of action shall have accrued nor unless a notice of claim shall have been served on a director of such corporation, or an officer or employee thereof designated by the corporation for such purpose, within the time limited by, and in compliance with the requirements of section fifty-e of the general municipal law.

2. The venue of every action, suit or special proceeding brought against a corporation shall be laid in the county in which the principal office of such corporation is located.

3. The state shall save harmless and indemnify directors, officers and employees of and representatives to a corporation pursuant to section seventeen of the public officers law, against any claim, demand, suit, or judgment arising by reason of any act or omission to act by such director, officer, employee or representative occurring in the discharge of his duties and within the scope of his service on behalf of such corporation. In the event of any claim, demand, suit or judgment based on allegations that financial loss was sustained by any person in connection with the acquisition, disposition or holding of securities or other obligations of a corporation (or those of any other public corporation if such loss allegedly resulted from its dealing with a municipal assistance corporation), a director, officer or employee of or representative to a municipal assistance corporation shall be saved harmless and indemnified, notwithstanding the limitations of subdivision one of section seventeen of the public officers law, unless such individual is found by a final judicial determination not to have acted, in good faith, for a purpose which he reasonably believed to be in the best interest of such corporation or not to have had reasonable cause to believe that his conduct was lawful.

§ 3021. Assistance by state officers, departments, boards and commissions

1. The department of audit and control, department of law, and all other state agencies may render such services to a corporation within their respective functions as may be requested by such corporation.

2. Upon request of a corporation, any state agency is hereby authorized and empowered to transfer to the corporation such officers and employees as it may deem necessary from time to time to assist such corporation in carrying out its functions and duties under this act. Officers and employees so transferred shall not lose or forfeit their civil service status or rights.

§ 2. The tax law is hereby amended by adding thereto two new sections, to be sections eleven hundred seven and eleven hundred eight, to read as follows:

§ 1107. Temporary municipal assistance sales and compensating use taxes for cities of one million or more

(a) General. On the first day of the first month following the month in which a municipal assistance corporation is created under article ten of the public authorities law [1] for a city of one million or more, in addition to the taxes imposed by sections eleven hundred five and eleven hundred ten, there is hereby imposed on such date, within the territorial limits of such city, and there shall be paid, additional taxes, at the rate of four percent, which except as provided in subdivision (b) of this section, shall be identical to the taxes imposed by sections eleven hundred five and eleven hundred ten. Such sections and the other sections of this article, including the definition and exemption provisions, shall apply for purposes of the taxes imposed by this section in the same manner and with the same force and effect as if the language of those sections had been incorporated in full into this section and had expressly referred to the taxes imposed by this section.

(b) Exceptions. (1) The exemptions provided for in paragraph (12) of subdivision (a) of section eleven hundred fifteen and subdivision (c) of such section shall not apply. (2) The transitional provisions contained in section eleven hundred six shall not apply to the taxes imposed by this section. (3) Where a sale of tangible personal property or services, including an agreement therefor, is made in a city in which the taxes imposed by subdivision (a) of this section apply, but the property sold or the property upon which the services were performed is or will be delivered to the purchaser elsewhere, such sale will not be subject to taxes imposed by such subdivision (a). However, if delivery occurs or will occur in any city where the tax imposed by such subdivision (a) applies, a vendor will be required to collect from the purchaser the sales or compensating use taxes imposed by this section. For the purposes of this section delivery shall be deemed to include transfer of possession to the purchaser and the receiving of the property by the purchaser. (4) The provisions of section twelve hundred fourteen shall be applicable to this section, but any reference in that section to a local sales or use tax imposed by a city shall mean the

additional taxes imposed by subdivision (a) hereof. (5) Where a retail sales tax or a compensating use tax was legally due and paid to any municipal corporation in this state, without any right to a refund or credit thereof, with respect to the sale or use of tangible personal property or any of the services subject to sales or compensating use tax, if the use of such property or services is then subject to the compensating use tax imposed by this section and such tax is at a higher rate than the rate of tax imposed by such municipal corporation, the tax imposed by this section shall also apply but only to the extent of the difference in such rates. For purposes of this subdivision, a payment to the tax commission of a tax imposed by a municipal corporation shall be deemed a payment to such municipal corporation.

(c) Tax on sale of service of parking, garaging or storing of motor vehicles. On the first day of the first month following the month in which a municipal assistance corporation is created under article ten of the public authorities law for a city of one million or more, in addition to the taxes imposed by sections eleven hundred five, eleven hundred ten and subdivision (a) of this section, there is hereby imposed on such date, within the territorial limits of such city, and there shall be paid, additional taxes at the rate of six percent on receipts from every sale of the service of providing parking, garaging or storing for motor vehicles by persons operating a garage (other than a garage which is part of premises occupied solely as a private one or two family dwelling), parking lot or other place of business engaged in providing parking, garaging or storing of motor vehicles. All provisions set forth in this article applicable to the taxes imposed under section eleven hundred five, including the definition and exemption provisions of this article, shall apply with respect to a tax imposed under this subdivision, except as to rate and except as otherwise provided herein. The transitional provisions contained in section eleven hundred six shall not apply to the taxes imposed by this section.

(d) Termination of taxes. At the end of the last day of the month in which all the notes and bonds of such municipal assistance corporation shall have been fully paid and discharged, together with interest thereon and interest on unpaid installments of interest, the taxes imposed by this section shall terminate. Despite such termination, the provisions of this section and any regulations promulgated thereunder, including the provisions with respect to assessment, payment, termination, collection and refund of such taxes, the requirements for filing returns, preservation of records and disposition of revenue shall continue in full force and effect with respect to all such taxes accrued up to the effective date of such termination.

[1] Public Authorities Law § 3001 et seq.

§ 1108. Temporary municipal assistance sales and compensating use taxes for cities of under one million

(a) General. On the first day of the first month following the month in which a municipal assistance corporation is created under article ten of the public authorities law for a city of less than one million, in

addition to the taxes imposed by sections eleven hundred five and eleven hundred ten, there is hereby imposed on such date, within the territorial limits of such city, and there shall be paid, additional taxes, at the rate of three percent, which except as provided in subdivision (b) of this section, shall be identical to the taxes imposed by sections eleven hundred five and eleven hundred ten. Such sections and the other sections of this article, including the definition and exemption provisions, shall apply for purposes of the taxes imposed by this section in the same manner and with the same force and effect as if the language of those sections had been incorporated in full into this section and has expressly referred to the taxes imposed by this section.

(b) Exceptions. (1) The receipts from the following shall be exempt from the tax on retail sales and the compensating use tax imposed by this section: All sales of tangible personal property for use or consumption directly and predominantly in the production of tangible personal property, gas, electricity, refrigeration or steam, for sale, by manufacturing, processing, generating, assembling, refining, mining, extracting, farming, agriculture, horticulture or floriculture, and all sales of telephone central office equipment and station apparatus or comparable telegraph equipment for use directly and predominantly in receiving at destination or in initiating and switching telephone or telegraph communications.

(2) The transitional provisions contained in section eleven hundred six shall not apply to the taxes imposed by this section.

(3) Where a sale of tangible personal property or services, including an agreement therefor, is made in a city in which the taxes imposed by subdivision (a) of this section apply, but the property sold or the property upon which the services were performed is or will be delivered to the purchaser elsewhere, such sale will not be subject to taxes imposed by such subdivision (a). However, if delivery occurs or will occur in any city where tax the imposed by such subdivision (a) applies, a vendor will be required to collect from the purchaser, the sales or compensating use taxes imposed by this section. For the purposes of this section delivery shall be deemed to include transfer of possession to the purchaser and the receiving of the property by the purchaser.

(4) The provisions of section twelve hundred fourteen shall be applicable to this section, but any reference in that section to a local sales or use tax imposed by a city shall mean the additional taxes imposed by subdivision (a) hereof.

(5) Where a retail sales tax or a compensating use tax was legally due and paid to any municipal corporation in this state, without any right to a refund or credit thereof, with respect to the sale or use of tangible personal property or any of the services subject to sales or compensating use tax, if the use of such property or services is then subject to the compensation [1] use tax imposed by this section and such tax is at a higher rate than the rate of tax imposed by such municipal corporation, the tax imposed by this section shall also apply but only to the extent of the difference in such rates. For purposes of this sub-

division, a payment to the tax commission of a tax imposed by a municipal corporation shall be deemed a payment to such municipal corporation.

(c) Termination of taxes. At the end of the last day of the month in which all the notes and bonds of such municipal assistance corporation shall have been fully paid and discharged, together with interest thereon and interest on unpaid installments of interest, the taxes imposed by this section shall terminate. Despite such termination, the provisions of this section and any regulations promulgated thereunder, including the provisions with respect to assessment, payment, termination, collection and refund of such taxes, the requirements for filing returns, preservations of records and disposition of revenue shall continue in full force and effect with respect to all such taxes accrued up to the effective date of such termination.

[1] So in original. Probably should read "compensating".

§ 3. Section eleven hundred forty-eight of such law, as amended by chapter six hundred ten of the laws of nineteen hundred sixty-nine, is hereby amended to read as follows:

§ 1148. Deposit and disposition of revenue

The tax commission shall deposit daily to the credit of the comptroller all taxes, penalties and interest collected under this article in a responsible bank, banking house or trust company as may be designated by the comptroller. The comptroller shall require adequate security from all such depositories. Of the revenue collected under this article the comptroller shall retain in his hands such amount as the commissioner of taxation and finance may determine to be necessary for refunds under this article out of which the comptroller shall pay any refunds made under the provisions of this article. The comptroller, after reserving such refund fund, shall on or before the twelfth day of each month, pay all taxes, interest and penalties collected under this article and remaining to his credit in such banks, banking houses or trust companies at the close of business on the last day of the preceding month, into the general fund of the state treasury, except as otherwise provided in section ninety-two-d of the state finance law.

§ 4. Section twelve hundred ten of such law is hereby amended by adding thereto four new subdivisions, to be subdivisions (f), (g), (h) and (i), to read as follows:

(f) On the first day of the first month following the month in which a municipal assistance corporation is created under article ten of the public authorities law [1], any taxes imposed pursuant to this section by the city in aid of which such corporation was created and, except as hereinafter provided for in subdivision (h) of this section, the power of such city to adopt and amend local laws, ordinances or resolutions imposing taxes pursuant to the authority of such section shall, notwithstanding any provision of article twenty-nine of this chapter [2] to the contrary, be suspended until all the notes and bonds of such municipal assistance corporation shall have been fully paid and discharged together with interest thereon and interest on unpaid installments of interest.

(g) All of the enabling act provisions, which authorized the imposition of the taxes suspended pursuant to this section, the local laws,

ordinances, and resolutions imposing such taxes, any regulations promulgated with respect to such taxes, including the provisions with respect to assessment, payment, determination, collection and refund of such taxes, requirements for filing returns, preservation of records and disposition of revenue shall continue in full force and effect with respect to all such taxes accrued up to the effective date of such suspension.

(h) Notwithstanding the provisions of subdivision (f) of this section, any city having a population of one million or more in which a municipal assistance corporation is created under article ten of the public authorities law shall continue to be authorized and empowered to adopt and amend local laws, imposing taxes, at a rate not to exceed four percent on the receipts of sales from the services of laundering, dry-cleaning, tailoring, weaving, pressing, shoe repairing and shoe shining, and charges to a patron for admission to, or use of, facilities for sporting activities in which such patron is to be a participant such as bowling alleys and swimming pools. Such taxes shall be administered, collected and distributed by the state tax commission as provided in subpart B of part III and in part IV of this article.

(i) On the first day of the first month following the month in which the state taxes provided for in section eleven hundred seven are terminated, the suspension provided for in subdivision (f) of this section shall terminate and any taxes which were in effect immediately prior to the effective date of the suspension shall go into full force and effect.

[1] Public Authorities Law § 3001 et seq.
[2] Tax Law § 1201 et seq.

§ 5. Section twelve hundred twelve-A of such law is hereby amended by adding thereto four new subdivisions, to be subdivisions (f), (g), (h) and (i), to read as follows:

(f) On the first day of the first month following the month in which a municipal assistance corporation is created under article ten of the public authorities law [1], any taxes imposed pursuant to this section by the city in aid of which such corporation was created and, except as hereinafter provided for in subdivision (h) of this section, the power of such city to adopt and amend local laws, ordinances or resolutions imposing taxes pursuant to the authority of such section shall, notwithstanding any provision of article twenty-nine of this chapter [2] to the contrary, be suspended until all the notes and bonds of such municipal assistance corporation shall have been fully paid and discharged together with interest thereon and interest on unpaid installments on interest.

(g) All of the enabling act provisions, which authorized the imposition of the taxes suspended pursuant to this section, the local laws, ordinances, and resolutions imposing such taxes, any regulations promulgated with respect to such taxes, including the provisions with respect to assessment, payment, determination, collection and refund of such taxes, requirements for filing returns, preservation of records and disposition of revenue shall continue in full force and effect with re-

spect to all such taxes accrued up to the effective date of such suspension.

(h) Notwithstanding the provisions of subdivision (f) of this section, any city having a population of one million or more in which a municipal assistance corporation under article ten of the public authorities law is created shall continue to be authorized and empowered, as provided in subdivision (a) of this section, to adopt and amend local laws imposing taxes, at the rate of eight percent, on receipts from every sale of the service of providing parking, garaging or storing for motor vehicles by persons operating a garage (other than a garage which is part of premises occupied solely as a private one or two family dwelling), parking lot or other place of business engaged in providing parking, garaging or storing for motor vehicles in any county within such city with a population density in excess of fifty thousand per square mile, as determined by reference to the latest federal census; and shall retain the power and authority to adopt and amend local laws imposing the taxes described in subdivision (b) of this section, subject to the provisions of subdivisions (d) and (e) of this section; provided that the taxes described in such subdivision (b) may be imposed at a rate not to exceed four percent. The taxes authorized to be imposed pursuant to this section shall be in addition to any other tax which such a city may impose or may be imposing pursuant to this article or any other law. Such taxes shall be administered, collected and distributed by the state tax commission as provided in subpart B of part III and in part IV of this article.

(i) On the first day of the first month following the month in which the state taxes provided for in section eleven hundred seven are terminated, the suspension provided for in subdivision (f) of this section shall terminate and any taxes which were in effect immediately prior to the effective date of the suspension shall go into full force and effect.

[1] Public Authorities Law § 3001 et seq.
[2] Tax Law § 1201 et seq.

§ 6. Section twelve hundred twenty-three of such law, as amended by chapter three hundred sixty-eight of the laws of nineteen hundred seventy-four, is hereby amended to read as follows:

§ 1223. Limitations on rates

No transaction taxable under sections twelve hundred two through twelve hundred four shall be taxed pursuant to this article by any county or by any city located therein, or by both, at an aggregate rate in excess of the highest rate set forth in the applicable subdivision of section twelve hundred one of this act or, in the case of any taxes imposed pursuant to the authority of section twelve hundred ten or twelve hundred eleven (other than taxes imposed by a city having a population of one million or more for the limited period provided in section twelve hundred ten or pursuant to subdivision (h) of section twelve hundred ten, at a rate in excess of three percent. If a transaction is taxed by both a county and a city, the rate of tax on such transaction imposed by the county or city, not having prior right thereto pursuant to section twelve hundred twenty-four, shall be deemed to be reduced (or the entire tax eliminated, if necessary) to the extent neces-

sary to comply with the foregoing requirement. A tax imposed by a county upon any transaction, to the extent that it would require a reduction in any tax rate imposed thereon by a city, shall not become effective in respect to any transaction taxed by such city (or in respect of other similar transactions outside of the city which, if occurring in such city, would be subject to such city tax) before the commencement of the city's next succeeding fiscal year and then only if the county shall have given notice to such city of its imposition of a tax on such transaction at least six months prior to the commencement of such fiscal year, provided however that the local legislative body of such city may waive the requirement of such notice and the postponement of the effective date of such tax. A city tax upon any transaction, to the extent that it would require a reduction in any tax rate imposed by a county thereon, shall not become effective in respect of any transaction taxed by such county before the commencement of the county's next succeeding fiscal year and then only if the city shall have given notice to such county of its imposition of a tax on such transaction at least six months prior to the commencement of such fiscal year, provided, however, that the local legislative body of such county may waive the requirement of such notice and the postponement of the effective date of such tax. However, whether or not the six months' notice requirement provided in this section has been waived, a tax imposed pursuant to the authority of section twelve hundred ten or twelve hundred eleven shall still be subject to the requirements provided for in the first three sentences of paragraph (d) of such sections and in paragraph (e) of such sections.

§ 7.[1] The state finance law is hereby amended by adding thereto a new section to be section ninety-two-d, to read as follows:

[1] So in original. Probably should read "§ 7-a.".

§ 92-d. Municipal assistance tax fund

1. There is hereby established in the custody of the comptroller a special fund to be known as the municipal assistance tax fund. Within such fund, there is hereby established a special account for each municipal assistance corporation created under article ten of the public authorities law [1].

2. Such fund shall consist of the revenues derived from municipal assistance sales and compensating use taxes imposed by sections eleven hundred seven and eleven hundred eight of the tax law.

3. The taxes interest and penalties imposed, pursuant to sections eleven hundred seven or eleven hundred eight (as the case may be) of the tax law within the territorial limits of a city in aid of which a municipal assistance corporation has been created, and received by the state tax commission, after deducting the amount which the commissioner of taxation and finance shall determine to be necessary for reasonable costs of the state tax commission in administering, collecting and distributing such taxes, shall be appropriated (i) to the municipal assistance corporation which has been created in aid of such city in order to enable such corporation to fulfill the terms of any agreements made with the holders of its notes and bonds and to carry out its corporate purposes, including the maintenance of the capital reserve fund, and (ii) the balance, if any, to the city in aid of which such corporation has been created as hereinafter provided.

4. On or before the twelfth day of each month, the commissioner of taxation and finance shall certify to the comptroller the amount of all revenues so received during the prior month as a result of the taxes, interest and penalties so imposed and in addition on or before the last day of June the commissioner shall certify the amount of such revenues received during and including the first twenty-five days of June. The amount of revenues so certified shall be deposited by the comptroller in the municipal assistance tax fund and the amount attributable to the taxes, interest and penalties imposed within the territorial limits of a city in aid of which a municipal assistance corporation has been created shall be credited to a special account established in such fund for such corporation. Notwithstanding the foregoing provisions, the state tax commission may prorate revenue attributable to the first quarterly return period during which the taxes imposed by section eleven hundred seven or eleven hundred eight (as the case may be) of the tax law applies so as to separate from the revenue collected for that quarter pursuant to such taxes the revenue collected pursuant to local legislation adopted by a city pursuant to section twelve hundred ten or twelve hundred twelve-A of the tax law. Such a proration by the state tax commission shall be made on the basis of the ratio of the number of months during which such taxes were imposed during such quarterly return to the total number of months in such quarterly return to the total number of months in such quarterly return period when such proration is reasonably necessary to ascertain the amount of such money which must be deposited by the comptroller in such special account and the amount of such money which must be deposited pursuant to section twelve hundred sixty-one of the tax law. The commissioner of taxation and finance shall not be held liable for any inaccuracy in any certification under this subdivision.

5. Revenues in any special account in the municipal assistance tax fund shall be kept separate and shall not be commingled with any other moneys in the custody of the comptroller. All deposits of such revenues shall, if required by the comptroller, be secured by obligations of the United States or of the state having a market value equal at all times to the amount of such deposits and all banks and trust companies are authorized to give security for such deposits. Any such revenues in such fund may, in the discretion of the comptroller, be invested in obligations of the United States or of the state or in obligations the princip [2] of and interest on which are guaranteed by the United States or by the state.

6. Upon receipt by the comptroller of a certificate or certificates from the chairman of a municipal assistance corporation that such corporation requires a payment or payments in order to comply with any agreement with the holders of its notes and bonds and to carry out its corporate purposes, including the maintenance of the capital reserve fund, from the special account established for such corporation, each of which certificates shall specify the required payment or payments and the date when the payment or payments is required, the comp-

troller shall pay from such special account on or before the specified date or within thirty days after such receipt, whichever is later, to such corporation, as the chairman thereof may direct in any such certificate, the amount or amounts so certified. The chairman of such corporation shall furnish the commissioner of taxation and finance with copies of such certificates. The comptroller shall from time to time, but in no event later than the fifteenth day of October, January and April and the last day of June of each fiscal year, pay over and distribute to the chief fiscal officer of the city in aid of which such municipal assistance corporation has been created to be paid into the treasury of such city to the credit of the general fund all revenues in the special account established for such corporation in the municipal assistance tax fund, if any, in excess of the aggregate amount which the chairman of such corporation has certified to the comptroller and which has been previously appropriated and paid to such corporation as hereinabove authorized. In no event shall the comptroller pay over and distribute any revenues (other than the amount to be deducted for administering, collecting and distributing such sales and compensating use taxes) to any person other than the municipal assistance corporation unless and until the aggregate of all payments certified to the comptroller as required by such corporation as of such date in order to comply with its agreements with the holders of its notes and bonds and to carry out its corporate purposes, including the maintenance of the capital reserve fund, which remain unappropriated or unpaid to such corporation shall have been appropriated to such corporation and shall have been paid in full; provided, however, that no person, including such corporation or the holders of its notes or bonds shall have any lien on such revenues and such agreement shall be executory only to the extent of such revenues available to the state in such special account. On the day on which the comptroller pays over and distributes to the chief fiscal officer of such city any revenues from such special account the commissioner of taxation and finance shall certify to the comptroller the amount to be deducted for administering, collecting and distributing the tax imposed pursuant to section eleven hundred seven or eleven hundred eight (as the case may be) of the tax law within the territorial limits of such city since he last certified such amount and the comptroller shall pay such amount into the general fund of the state treasury to the credit of the state purposes fund therein.

7. In the event that the amount of revenues in the special account established for the municipal assistant corporation for the city of New York in the municipal assistance tax fund which have been appropriated to such corporation shall at any time be less than the amount which the chairman of such corporation has certified to the comptroller as required in order to comply with its agreeements with the holders of its notes and bonds and to carry out its corporate purposes, including the maintenance of the capital reserve fund, then and in such event the comptroller shall forthwith certify to the commissioner of taxation and finance the amount of the difference between the revenues in such

special account and the amount so certified as required by such corporation and upon receipt of such certificate the commissioner of taxation and finance shall approve a voucher for payment of the amount of such difference into such special account in the municipal assistance tax fund from the stock transfer tax fund established pursuant to subdivision one of section ninety-two-b of the state finance law at the next date for payment from such fund as provided in subdivision four of such section, anything in said section to the contrary notwithstanding.

8. All payments of moneys from the municipal assistance tax fund shall be made on the audit and warrant of the state comptroller.

[1] Public Authorities Law § 3001 et seq.
[2] So in original. Probably should read, "principal".

§ 7.[1] Subdivisions three and four of section ninety-two-b of such law, as amended by chapter seven hundred sixty-eight of the laws of nineteen hundred sixty-nine, are hereby amended to read as follows:

[1] So in original. Probably should read "§ 7-b.".

3. The moneys received from such tax and other sources in such fund, after deducting the amount the commissioner of taxation and finance shall determine to be necessary for reasonable costs of the state tax commission in administering, collecting and distributing such tax, commencing with the fiscal year ending March thirty-first, nineteen hundred seventy-seven, shall be appropriated to (i) the municipal assistance corporation for the city of New York created pursuant to title three of article ten of the public authorities law [1] in order to enable such corporation to fulfill the terms of any agreements made with the holders of its notes and bonds and to carry out its corporate purposes including the maintenance of the capital reserve fund and (ii) to the extent such moneys are not required by such corporation as provided in subdivision seven of section ninety-two-d of the state finance law as added by a chapter of the laws of nineteen hundred seventy-five to the city of New York, for the support of local government.

4. After the deduction of such costs of the state tax commission in administering, selecting and distributing such tax, the balances in such fund so appropriated shall be distributed and paid on the last day of September, December, March and June into the special account established for the municipal assistance corporation for the city of New York in the municipal assistance tax fund established pursuant to subdivision one of section ninety-two-d of the state finance law as added by a chapter of the laws of nineteen hundred seventy-five, unless and to the extent the balances in such fund on each such last day are not required by such corporation as provided in said subdivision seven of said section ninety-two-d of the state finance law in which case the balance not so required, if any, shall be distributed and paid to the chief fiscal officer of the city of New York to be paid into the treasury of the city to the credit of the general fund, and on each such day, the commissioner of taxation and finance shall certify to the comptroller the amount deducted for administering, collecting and distributing such tax during such quarterly period and shall pay such amount into the general fund of the state treasury to the credit of the state purposes fund therein. In no event shall any amount (other than the amount to be deducted for administering, collecting and distributing such tax) be distributed or paid

from the stock transfer fund to any person other than the municipal assistance corporation for the city of New York unless and until the aggregate of all payments certified to the comptroller as required by such corporation in order to comply with its agreements with the holders of its notes and bonds and to carry out its corporate purposes, including the maintenance of the capital reserve fund, which remain unappropriated or unpaid to such corporation shall have been appropriated to such corporation and shall have been paid in full provided, however, that no person, including such corporation or the holders of its notes or bonds shall have any lien on such tax and such agreements shall be executory only to the extent of the balances available to the state in such fund.

[1] Public Authorities Law § 3001 et seq.

§ 8. Inconsistent provisions of other laws superseded. Insofar as the provisions of this act are inconsistent with the provisions of any other law, general or special, the provisions of this act shall be controlling.

§ 9. If any provision of this act is declared unconstitutional, no other provisions of this act shall be rendered ineffective, unless inseparable from the provision declared to be unconstitutional.

§ 10. This act shall take effect immediately.

New York City—Municipal Assistance Corporation

CHAPTER 169

An Act to amend the public authorities law, in relation to creating the municipal assistance corporation for the city of New York; to amend the state finance law, in relation to bonds and notes of such corporation; and to amend the public authorities law, in relation to the termination of the authority and existence of the New York city stabilization reserve corporation.

Approved and effective June 10, 1975.

Passed on message of necessity. See Const. art. IX, § 2(b)(2), and McKinney's Legislative Law § 44.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Article ten of the public authorities law, as added by a chapter of the laws of nineteen hundred seventy-five, entitled "An Act to amend the public authorities law, in relation to municipal assistance corporations; to amend the tax law, in relation to the municipal assistance sales and compensating use tax; and to amend the state finance law, in relation to the municipal assistance tax fund",[1] is hereby amended by adding thereto a new title, to be title three, to read as follows:

[1] 1975 McKinney Session Laws, Chapter 168.

TITLE III—MUNICIPAL ASSISTANCE CORPORATION FOR THE CITY OF NEW YORK

Sec.
3030. Short title.
3031. Legislative findings and statement of purposes.
3032. Definitions.

Sec.
3033. Creation of the municipal assistance corporation for the city of New York; authorized indebtedness.
3034. Administration of the corporation.
3035. Exchange of notes or bonds of the corporation for short-term obligations of the city.
3036. Payments to the corporation; funds of the corporation.
3037. Payments to or purchases of obligations of the city.
3038. Conditions on extension of benefits to the city.
3039. Review by the corporation.
3040. Remedies of the corporation.

§ 3030. Short title

This title shall be known and may be cited as the "Municipal Assistance Corporation for the city of New York Act".

§ 3031. Legislative findings and statement of purposes

The legislature hereby finds and declares that it is necessary for a municipal assistance corporation to be created to assist the city of New York in providing essential services to its inhabitants without interruption and in creating investor confidence in the soundness of the obligations of such city so that it may retain its ability to sell its obligations to the public.

§ 3032. Definitions

As used in this title, the following words and terms shall have the following meanings unless the context shall indicate another or different meaning or intent:

1. "Corporation" means the corporate governmental agency created by section three thousand thirty-three of this chapter.
2. "City" means the city of New York.
3. "Mayor" means the mayor of the city of New York.
4. "City comptroller" means the comptroller of the city of New York.
5. "City budget director" means the director of management and budget of the city of New York.
6. "Short-term obligations" means tax anticipation notes, revenue anticipation notes, bond anticipation notes, budget notes and urban renewal notes.

§ 3033. Creation of the municipal assistance corporation for the city of New York; authorized indebtedness

1. There is hereby created the municipal assistance corporation for the city of New York. The corporation shall be a corporate governmental agency and instrumentality of the state constituting a public benefit corporation. It shall have the powers, privileges and duties of a corporation under title two of this article and under this title. The corporation shall continue for a term of one year after all its liabilities have been fully paid and discharged. Upon the termination of the

existence of the corporation, all of its rights and property shall pass to and be vested in the state.

2. The corporation shall not issue bonds and notes in an aggregate principal amount exceeding three billion dollars, excluding bonds and notes issued to refund outstanding bonds and notes;
provided, however, that if bonds and notes are issued by the New York City stabilization reserve corporation pursuant to title twenty-six of article eight of the public authorities law [1], the maximum principal amount of bonds and notes which may be issued by the corporation shall be decreased by the difference between the principal amount of such bonds and notes issued by the New York city stabilization reserve corporation and the principal amount of such bonds and notes held by the corporation.

3. No note or bond (i) shall mature more than fifteen years from the date of the original issue of such note or bond or (ii) or shall be issued on a date later than five years after the effective date of this act, unless such note is a renewal or refunding of an outstanding note or bond.

[1] Public Authorities Law § 2530 et seq.

§ 3034. Administration of the corporation

1. The corporation shall be administered by a board of directors, consisting of nine directors, none of whom shall be officers or employees of the federal government or of the state or political subdivisions thereof. All of the directors shall be appointed by the governor with the advice and consent of the senate, provided that four of such directors shall be appointed upon written recommendation of the mayor. Of the directors initially appointed upon the written recommendation of the mayor, one shall serve for a term ending December thirty-first, nineteen hundred seventy-six; one shall serve for a term ending December thirty-first, nineteen hundred seventy-seven; one shall serve for a term ending December thirty-first, nineteen hundred seventy-eight; and one shall serve for a term ending December thirty-first, nineteen hundred seventy-nine. Of the remaining directors initially appointed by the governor, one shall serve for a term ending December thirty-first, nineteen hundred seventy-six; one shall serve for a term ending December thirty-first, nineteen hundred seventy-seven; one shall serve for a term ending December thirty-first, nineteen hundred seventy-eight; and two shall serve for a term ending December thirty-first, nineteen hundred seventy-nine. Each director shall hold office until his successor has been appointed and qualified. Thereafter each director appointed by the governor shall serve a term of four years, except that any director appointed to fill a vacancy shall serve only until the expiration of his predecessor's term.

2. The speaker and the minority leader of the assembly, the president pro-tem and the minority leader of the senate, the city board of estimate acting by majority vote, and the vice-chairman of the city council, shall each be entitled to appoint a representative to the board of directors. Each such representative shall be entitled to receive no-

tice of and to attend all meetings of the board of directors but shall not be entitled to vote. No representative shall be an employee or officer of the federal, state or city governments. Each representative shall serve at the pleasure of the appointing official or body, shall be eligible for reappointment, and shall hold office until his successor has been appointed.

§ 3035. Exchange of notes or bonds of the corporation for short-term obligations of the city

1. The corporation may issue its notes or bonds in exchange for short-term obligations of the city, provided that the principal amount of the corporation's notes or bonds issued in any such exchange shall not exceed the principal amount of such short-term obligations and accrued interest thereon at the stated rate to the date of such exchange.

2. Upon receipt of the short-term obligations of the city exchanged in accordance with subdivision one hereof, the corporation may deliver such short-term obligations to the city, which shall thereupon cancel such obligations without making any payment of principal amount or accrued interest thereon and the city shall have no further liability with respect thereto. Notwithstanding the foregoing, the corporation shall not deliver bond anticipation notes received pursuant to subdivision one to the city for cancellation unless the city pays the principal amount and accrued interest thereon or pays accrued interest and exchanges such bond anticipation notes for other bond anticipation notes of the city in equal principal amounts and at not less than the same interest rate, in refunding or renewal thereof.

3. The corporation shall not exchange any of its bonds or notes for short-term obligations of the city pursuant to subdivision one hereof unless (a) the city shall have agreed to observe the conditions set forth in section three thousand thirty-eight of this chapter, subject to such modifications as are permitted thereunder and as the corporation may then approve, and (b) the board of directors of the corporation shall have determined that the terms of such exchange will not prejudice the rights of holders of other bonds and notes of the city.

§ 3036. Payments to the corporation; funds of the corporation

1. Not less than one hundred twenty days before the beginning of each fiscal year of the corporation (but not later than July 1, 1975 for the fiscal year ending June 30, 1976), the chairman of the board of directors of the corporation shall certify to the state comptroller and to the mayor a schedule setting forth the cash requirements of the corporation for such fiscal year and the time or times when such cash is required. The total amount so certified by such chairman for such fiscal year shall be equal to: (i) the amounts which are required to be deposited in the capital reserve fund during such fiscal year in order to maintain the capital reserve fund of the corporation at the level required in accordance with subdivision five of this section; (ii) the amounts required to be deposited in the debt service fund of the corporation to pay all interest and all payments of principal and redemp-

tion premium, if any, on notes and bonds maturing or otherwise coming due during such fiscal year; and (iii) the amounts required to be deposited in the operating fund of the corporation, as determined by the corporation, to meet the operating requirements and other expenses of the corporation during such fiscal year. If any increase shall occur in the cash requirements specified above, or if payments are required at a time or times earlier than previously certified or if the city shall for any reason fail to make timely payment of the principal and accrued interest due on any obligation issued by the city to the corporation and maturing within the same fiscal year, such chairman shall certify a revised schedule of cash requirements for such fiscal year to the state comptroller and to the mayor. The schedule accompanying each certification (or revision thereof) shall provide for such payment dates as the corporation deems appropriate to assure that sufficient funds will be available from the sources identified below to enable it to meet its current obligations as they come due. Upon receipt of such certification, or any revision thereof, the state comptroller shall pay such amount to the corporation for deposit in the appropriate funds, in accordance with such certification from the special account established for the corporation in the municipal assistance tax fund, in accordance with subdivision one of section ninety-two-d of the state finance law, including any amount transferred to the municipal assistance tax fund from the stock transfer tax fund pursuant to subdivision four of section 92-b of the state finance law. Any such payment shall be made within thirty days of receipt of the certification or at the time specified in the certification, whichever is later; provided that any such amounts shall have been first appropriated by the state for such purpose or shall have been otherwise made available. Any amount so paid to the corporation shall be deducted from the amount otherwise payable to the city from the municipal assistance tax fund established by section ninety-two-d of the state finance law and shall not obligate the state to make, nor entitle the city to receive, any additional payments.

2. Notwithstanding subdivision one of this section, prior to any transfers from the stock transfer tax fund to the municipal assistance tax fund, moneys, if any, payable to any other public benefit corporation from such fund pursuant to the provision of any law, the effective date of which is prior to the effective date of this title, shall be paid in full to such other corporation.

3. The corporation shall create and establish a special fund (herein referred to as capital reserve fund), and shall pay into such capital reserve fund (i) any moneys appropriated and made available by the state for the purposes of such fund, (ii) any proceeds of sale of notes or bonds, to the extent provided in the resolution of the corporation authorizing the issuance thereof, and (iii) any other moneys which may be made available to the corporation for the purpose of such fund from any other source or sources. All moneys held in the capital reserve fund, except as hereinafter provided, shall be used solely for the payment of the principal of bonds of the corporation, as the same mature

or otherwise become due, the purchase of bonds of the corporation, the payment of interest on such bonds of the corporation or the payment of any redemption premium required to be paid when such bonds are redeemed prior to maturity. If the amount contained in the capital reserve fund exceeds the amount required to be contained in such fund pursuant to this subdivision three of this section plus any additional amounts required to be contained in such fund pursuant to the terms of issuance of any bonds or notes, such excess moneys may be withdrawn from the capital reserve fund by the corporation; provided, however, that moneys in such fund shall not be withdrawn therefrom at any time in such amounts as would reduce the amount of such fund to less than the amount of principal and interest maturing or otherwise becoming due in the succeeding calendar year on all bonds of the corporation then outstanding, except for the purpose of paying principal of and interest on such bonds of the corporation maturing or otherwise becoming due and for the payment of which other moneys of the corporation are not available. Any income or interest earned by, or increment to, the capital reserve fund due to the investment thereof may be transferred by the corporation to any other fund of the corporation to the extent it does not reduce the amount of the capital reserve fund below the amount of principal and interest maturing or otherwise becoming due in the succeeding calendar year on all bonds of the corporation then outstanding.

4. In order further to assure the maintenance of the capital reserve fund, there shall be annually appropriated and paid to the corporation for deposit in the capital reserve fund such sum, if any, as shall be certified by the chairman to the governor and director of the budget as necessary to restore the capital reserve fund to an amount equal to the capital reserve fund requirement. The chairman of the board of directors of the corporation shall, annually, on or before December first, make and deliver to the governor and director of the budget his certificate stating the sum, if any, required to restore the capital reserve fund to the amount aforesaid; and the sum or sums so certified, if any, shall be appropriated and paid to the corporation during the then current state fiscal year.

5. The corporation shall not issue bonds at any time if the amount of principal and interest maturing or otherwise becoming due in the succeeding calendar year on such bonds then to be issued and on all other bonds of the corporation then outstanding will exceed the amount of the capital reserve fund requirement at the time of issuance, unless the corporation, at the time of such issuance, shall deposit in the capital reserve fund from the proceeds of the bonds so to be issued, or otherwise, an amount which, together with the amount then in such fund, will be not less than the amount of principal and interest maturing or otherwise becoming due in the succeeding calendar year on such bonds then to be issued and on all other bonds of the corporation then outstanding (such amount is herein sometimes referred to as the capital reserve fund requirement). Notwithstanding the foregoing provisions of this subdivi-

sion for each of the calendar years set forth below the capital reserve fund requirement, as of any date of calculation, shall equal the percentage set forth opposite such calendar year of the amount of principal and interest maturing or otherwise becoming due during such calendar year on all bonds of the corporation outstanding on such date:

Calendar Year	Percentage
1975	0%
1976	0%
1977	25%
1978	50%
1979	75%
1980	100%

6. In computing the amount of the capital reserve fund for the purposes of this section securities in which all or a portion of such fund shall be invested shall be valued at par or if purchased at other than par, at amortized value.

7. The corporation shall create a debt service fund and an operating fund and may create and establish such other fund or funds as may be necessary or desirable for its corporate purposes.

8. The fiscal year of the corporation shall be the same as the fiscal year of the city.

§ 3037. Payments to or purchases of obligations of the city

In the event that the mayor from time to time certifies to the corporation an amount required by the city to enable it to pay, at maturity, the principal of and interest on any short-term obligations of the city, or to pay operating expenses of the city, the corporation may (i) pay to the city, or (ii) purchase from the city obligations hereafter issued by the city in an amount equivalent to, part or all of such certified amount. Moneys paid to the city pursuant to clause (i) or (ii) of this section shall be held in trust for the payment of short-term obligations or shall be used to pay operating expenses of the city. Any obligations issued by the city and purchased by the corporation pursuant to this section shall mature on a date not later than fifteen years from the original date of issue of such obligations. The corporation shall not make any payment to the city, or purchase any obligations from the city, pursuant to this section unless the city shall have agreed to observe the conditions set forth in section three thousand thirty-eight of this chapter, subject to such modifications as are permitted thereunder. The oustanding amounts paid to the city for operating expenses pursuant to clause (i) and clause (ii) of this subdivision shall not exceed one billion seven hundred twenty-five million dollars, provided that not more than nine hundred million dollars shall be obligations maturing in a fiscal year succeeding the fiscal year in which issued (of which not less than seven hundred fifty million dollars shall be applied for welfare or public education purposes, as to which state assistance payments have been or will be advanced to the city) and shall be evidenced by city obligations, and any balance shall be short term obligations payable in the fiscal year in which issued.

§ 3038. Conditions on extension of benefits to the city

The corporation shall, at the time of any exchange of the corporation's bonds and notes for short-term obligations of the city pursuant to subdivision two of section three thousand thirty-five of this chapter or any payment of funds of the corporation to the city or of any purchase from the city of its obligations pursuant to section three thousand thirty-seven of this chapter, require the city to agree to observe and perform the conditions set forth below in this section, with such limitations as to the implementation of such conditions as the corporation may, subject to any contract with bondholders or noteholders, then approve; provided, however that no such specific limitations shall be so substantial as to effectively constitute a waiver of any such conditions. Any such conditions may thereafter, in the discretion of the corporation, subject to any contract with bondholders or noteholders, be further limited. Such conditions shall cease to apply when all notes and bonds have been repaid or when the corporation has accumulated in its capital reserve fund or otherwise an amount equal to the principal of all outstanding notes and bonds and interest accrued thereon. The city shall have the right at any time to pay the corporation an amount which, when added to the capital reserve fund, shall equal the principal of all outstanding notes and bonds and interest accrued thereon and redemption premium if any. If the city makes such payment at a time when the corporation has outstanding notes or bonds that are not then callable, the city shall agree to pay the corporation on demand an amount equal to the amount, if any, by which the amount of interest on such notes or bonds shall exceed the corporation's income from the investment of its funds. Subject to the foregoing, the conditions that the corporation shall require the city to observe and perform shall be as follows:

1. The city shall deliver a certificate, executed by the mayor and the city comptroller in form prescribed by the corporation, (a) representing that the city is in compliance with the conditions described below in this section as the corporation may specify, (b) undertaking to comply with any of such specified conditions as the corporation may then require and (c) stating that all local legislative and executive action then required to permit such compliance by the city has been taken. The corporation may require the delivery with such certificate of an opinion of the city's corporation counsel that all such legislative and executive action has been taken.

2. The city shall, within ninety days after the first such agreement, initiate steps to adopt as the city's method of accounting for purposes of reporting to the corporation with respect to the city's financial condition and compliance with the conditions of this section, the accounting principles set forth in the state comptroller's uniform system of accounts for municipalities, as the same may be modified by the state comptroller, in consultation with the city comptroller, for application to the city. The city shall complete the transition to such accounting method as promptly as reasonably practicable thereafter and, in any event, so that the audited financial statements for the fiscal year ending June

thirtieth, nineteen hundred seventy-eight and for each subsequent fiscal year that are to be provided to the corporation pursuant to subdivision three of this section three thousand thirty-eight shall be prepared in accordance with such accounting methods, except as provided below in this subdivision. It is recognized that the adoption of such accounting principles may result in substantial adjustments from the accounting principles now followed by the city. The corporation and the city shall consult, over the course of the introduction and adoption of such accounting system, in order to formulate a mutually acceptable method of phasing such adjustments into such accounting system over such reasonable period, not exceeding ten years, as the corporation may determine to be appropriate and the financial statements and other information to be furnished to the corporation may, notwithstandnig any other provision of this section three thousand thirty-eight be prepared in accordance with such determination.

3. The city shall take such action as may be necessary to enable the state comptroller, or at his election an independent certified public accounting firm retained by the city but satisfactory to the state comptroller, to perform an annual audit and to furnish to the corporation an annual report, for the fiscal year ending June thirtieth, nineteen hundred seventy-eight and for each subsequent fiscal year, upon the financial statements of the city. Each such report shall be prepared in accordance with the accounting method prescribed under subdivision two of this section. The city shall make available for inspection and copying all books, records, work papers and other data and material as required by the state comptroller or the independent certified public accounting firm conducting such audit and the city shall make its officers and employees available to and shall cooperate with such auditors so as to permit such annual audit to be completed and the report issued to the city and to the corporation within one hundred twenty days after the close of the fiscal year. Such report shall be made available to the public promptly thereafter.

4. Beginning with the fiscal year ending June thirtieth, nineteen hundred seventy-seven and for each fiscal year thereafter, the city shall deliver a proposed expense budget to the corporation. Delivery to the corporation shall be made concurrently with the initial submission of the proposed expense budget to the board of estimate and the city council, but in any event not later than forty-five days prior to the beginning of such fiscal year. Beginning with the fiscal year ending June thirtieth, nineteen hundred seventy-eight, and for each fiscal year thereafter, the proposed expense budget submitted to the corporation shall be prepared in accordance with the accounting principles set forth in subdivision two of this section (except as may be modified by the application of subdivision five of this section). Such budget shall be identical to the proposed expense budget submitted to the board of estimate and city council except for any differences resulting from the application of such accounting principles. The proposed expense budget delivered to the corporation shall be accompanied by (i) a statement setting forth in

detail the assumptions of income and expense used in its preparation, (ii) a reconciliation of the differences, if any, between such proposed expense budget and the proposed expense budget submitted to the board of estimate and the city council, and (iii) a certificate of the mayor stating that such assumptions are reasonable and that operation within the budget is feasible and explaining the reasons for any differences therein from the proposed expense budget submitted to the board of estimate and the city council. The city shall in every fiscal year adopt and maintain an expense budget in which the total of all income items equals or exceeds the total of all expenditure items. For the fiscal year ending June thirtieth, nineteen hundred seventy-eight and each subsequent fiscal year the total of all income items shall also equal or exceed the total of all expenditure items in each expense budget as adopted by the city, after the adjustments, if any, required to conform to the accounting principles set forth in subdivision two of this section (except as may be modified by the application of subdivision five of this section) and the city shall also maintain a budget balanced in accordance with such accounting principles.

5. The city shall, over a period of ten fiscal years (except as provided in paragraph (e) of this subdivision), beginning with its fiscal year ending June thirtieth, nineteen hundred seventy-seven, eliminate from its capital budget those expenses that are properly includable only in its expense budget, as determined in accordance with the accounting principles set forth in the state comptroller's uniform system of accounts for municipalities, as the same may be modified by the state comptroller, in consultation with the city comptroller, for application to the city. The determination of which items are properly includable only in the city's expense budget shall be made in accordance with the aforesaid accounting principles regardless of any act of the legislature prior or subsequent to the effective date of this title otherwise classifying such items. To implement the foregoing:

(a) The mayor and the city comptroller shall, not later than October thirty-first, nineteen hundred seventy-five, certify to the corporation, a list, to the best of their information, of the expense items in the city's capital budget for the fiscal year ending June thirtieth, nineteen hundred seventy-six, and the amount of each such item;

(b) The comptroller (or the independent certified public accounting firm then retained pursuant to subdivision three of this section) shall prepare a determination of and shall report upon the expense items and the amount thereof in the city's capital budget for the fiscal year ending June thirtieth, nineteen hundred seventy-six and for each subsequent fiscal year, in accordance with the aforesaid accounting principles. Such report shall also include a statement as to the city's compliance with the conditions of this subdivision for the fiscal year reported upon and in the budget for the succeeding fiscal year;

(c) Unless the corporation shall approve the inclusion of a greater amount with respect to any such fiscal year, the aggregate amount of all such expense items included in the capital budget for the fiscal year end-

ing June thirtieth, nineteen hundred seventy-seven and for each following fiscal year shall be reduced at the cumulative rate of ten percent per year from the aggregate amount for the nineteen hundred seventy-six fiscal year set forth in the report provided for under paragraph (b) of this subdivision (or set forth in the certification under paragraph (a) of this subdivision if such report has not then been prepared). For the fiscal year ending June thirtieth, nineteen hundred eighty-six and thereafter, no such expense items shall be included in the city's capital budget;

(d) For the fiscal year ending June thirtieth, nineteen hundred seventy-seven and continuing thereafter, the city shall not include any new or additional item in its capital budget which, in accordance with the aforesaid accounting principles, is properly includable only in its expense budget; and

(e) On recommendation from the mayor, expressing the reasons therefor, the corporation shall consider and may approve an extension of the period over which such expense items are to be eliminated from the city's capital budget, but not beyond the fiscal year ending June thirtieth, nineteen hundred ninety-one. In the event any such extension is approved, the corporation shall without deferring the time when such elimination shall begin, approve an appropriate reduction in the cumulative annual rate of such elimination to not less than five percent.

6. If after the adoption of the expense budget for any fiscal year, any increase therein, or an increase in total expenditures shall be proposed, the mayor shall cause such proposal to be submitted to the corporation concurrently with its submission to the board of estimate and the city council, together with a statement of the source of current income or other identifiable and currently available funds required for the payment of such additional amounts.

7. Commencing at such time as the corporation may specify, but not later than December 1, 1975 the city budget director shall deliver to the corporation, not less than thirty days before each fiscal quarter (except, within thirty days after the commencement of the first fiscal quarter), an expenditure plan to implement the city expense budget for such fiscal quarter and within amounts based on current income or other identifiable and currently available funds. The city budget director shall deliver to the corporation within thirty days after the end of each such fiscal quarter covered by an expenditure plan, an operations report reflecting results of city operations for such fiscal quarter and whether the city has operated within the related expenditure plan. Each expenditure plan and operations report shall be in such form as the corporation may specify and shall be certified by the city budget director and shall detail and report upon action taken by the city to maintain a balanced expense budget.

8. The city shall comply in all material respects with the expenditure limitations in its budgets as adopted or modified in accordance with subdivision four and six of this section, except insofar as any noncompliance is the result of (a) such unanticipated circumstance occurring during such

fiscal year that would permit the issuance of budget notes, or (b) a mandatory increase in expenditures by reason of state or federal legislation enacted after the adoption of the city's budget for such fiscal year.

9. a. The city shall not, at any time permit the aggregate principal amount of its outstanding short-term obligations plus the aggregate principal amount of all notes and bonds issued by the corporation (less any notes or bonds of the corporation which have been refunded or renewed and less any short-term obligations of the city then held by the corporation) to exceed (i) six billion one hundred million (hereinafter called the base debt limit) plus (ii) an additional amount, not exceeding ten percent of the base debt limit; provided, however, that during the fiscal years ending June 30, 1976 and 1977 such additional amount may not exceed thirty percent of the base debt limit, during the fiscal year ending June 30, 1978 the additional amount may not exceed twenty-five per cent of the base debt limit, during the fiscal year ending June 30, 1979, the additional amount may not exceed twenty per cent of the base debt limit, and during the fiscal year ending June 30, 1980 the additional amount may not exceed fifteen per cent of the base debt limit.

b. In addition to the foregoing limitation the city shall not, at any date, permit the aggregate principal amount of its outstanding short-term obligations (excluding bond anticipation notes) plus the aggregate principal amount of all notes and bonds issued by the corporation (less any notes or bonds refunded or renewed and less any short-term obligations of the city then held by the corporation and less any short-term obligations of the city issued and payable within the same fiscal year) to exceed four billion five hundred million dollars plus, in the discretion of the board of directors, an additional amount not exceeding five hundred million dollars.

c. Notwithstanding any other provision of this act, the corporation shall not have the authority to modify or waive the limitations on the aggregate amount of outstanding short-term obligations of the city permitted to be outstanding in excess of the limits specified in paragraphs (a) and (b) of this subdivision.

d. Not less than twenty days prior to the issuance of any short-term obligations by the city, other than such obligations to be issued to the corporation, on or after July first, nineteen hundred seventy-five, the city comptroller shall deliver to the corporation a notice of intent to issue such obligations, specifying the amount and proposed terms thereof and the authority under which such obligations are proposed to be issued, together with a certificate of the city budget director specifying the purpose and the proposed source of funds for the redemption thereof. The city comptroller and the city budget director shall provide such additional information and shall be available for consultation as the corporation may request. If, within ten days after the receipt of such a notice from the city, the corporation determines after consultation with the city comptroller and the city budget director, that the issuance of such obligations would violate the limitation of this subdivision, the corporation shall deliver to the city comptroller

a certified copy of such determination within such 10-day period and the city comptroller shall not thereafter issue such obligations.

§ 3039. Review by the corporation

In order to determine whether the city has taken or is taking action to effect compliance with any conditions imposed pursuant to section three thousand thirty-eight of this chapter, the corporation may from time to time conduct a review of the records, accounts, budgets, forecasts, projections and other relevant materials of the city. The corporation may conduct such review by using (i) its own employees, (ii) its agents, or (iii) any state employees provided to the corporation for such purpose. The city shall make available for such review all books and records, and shall furnish copies of all financial statements, budgets, forecasts, projections, information or corrective action taken by the city in response to any notices from the corporation and all information related to the foregoing, as requested by the persons conducting such review, and shall make its officers and employees available to and shall otherwise cooperate with such persons to permit such review to be completed as promptly as possible.

§ 3040. Remedies of the corporation

1. The corporation shall cause each proposed expense budget, including related revenue estimates, submitted to it pursuant to subdivision four of section thirty hundred thirty-eight of this chapter, each report on expense items in the capital budget submitted to it pursuant to subdivision five of such section, each proposed modification furnished to it pursuant to subdivision six of such section and each expenditure plan and operations report submitted to it pursuant to subdivision seven of such section, to be reviewed promptly by the corporation's staff or designee.

2. If, within forty-five days after such receipt, the board of directors shall, in its judgment, determine that any such expense budget will not be balanced, either by its terms or because income is overestimated or expenditures are underestimated therein, or that a report of proposed modification pursuant to subdivision six of section thirty hundred thirty-eight of this chapter reflects that the expense budget would thereafter not be balanced, or that a condition imposed pursuant to such section has not been met or will not be met, with respect to such fiscal year, then the corporation shall promptly notify the mayor of such determination and shall review with him the manner in which corrective action may be taken in order to comply with such conditions.

3. In the event that the board of directors determines, following review with the mayor pursuant to subdivision two of this section that the corrective action necessary to cause compliance with the conditions of section thirty hundred thirty-eight of this chapter will not be taken, or determines as a result of a review made pursuant to section thirty hundred thirty-nine of this chapter or otherwise that the city is not compliance [1] with any of the conditions imposed pursuant to section thirty hundred thirty-eight of this chapter or that any representation or undertak-

ing contained in any certificate delivered pursuant to such section is materially incorrect or has not been complied with in all material respects, the corporation shall promptly certify a copy of such determination of noncompliance to the governor, the legislature, the state comptroller, the mayor, the board of estimate, the city council and the city comptroller and shall disclose such determination to the public.

4. The remedies described above in this section are not exclusive and, in addition thereto, the corporation shall have and may exercise all other rights and remedies provided by law.

[1] So in original. Probably should read "not in compliance".

§ 2. Section ninety-eight of the state finance law is hereby amended by adding thereto a new subdivision, to be subdivision seventeen, to read as follows:

17. Bonds and notes issued for any of the corporate purposes of the municipal assistance corporation for New York City.

§ 3. Section ninety-eight-a of such law, as amended by chapter seven of the laws of nineteen hundred seventy-five, is hereby amended to read as follows:

§ 98-a. Investment of general funds, bond proceeds, and other funds not immediately required

Any moneys in the general fund of the state or moneys received from the sale of any bonds or notes issued by the state, any moneys in any fund or account of the state, heretofore or hereafter established, the investment of which is not otherwise authorized and which are not immediately required may be invested by the comptroller. Such moneys may be invested only in obligations of the categories specified in subdivisions one to five, both inclusive, and subdivisions seven, fourteen, fifteen ~~and~~, sixteen and seventeen of section ninety-eight of this chapter, maturing or redeemable at the option of the holder within two years of the date of such investment or in a certificate of deposit of a bank or trust company in this state. Any certificate of deposit shall be fully secured by the issuer thereof depositing with the comptroller stocks, bonds, or notes of any county, town, city, village, fire district or school district of this state issued pursuant to law and maturing within five years from the date of issuance of such certificate of deposit, bonds or notes or direct or guaranteed obligations of the United States of America or its agencies or of the state of New York in an amount equal to the amount of such certificate of deposit. Any bonds, notes or certificates of deposit purchased with moneys of the general fund shall be available always to pay any lawful appropriation in force. Any bonds, notes or certificates of deposit purchased with moneys received from the sale of any bonds or notes issued by the state shall be available always for the purposes or purpose for which such bonds or notes were issued. Any bonds, notes or certificates of deposit purchased with moneys of any other funds shall be available always for the purpose for which such fund was created. Unless otherwise required by law, income received on any moneys invested pursuant to this section shall be credited to the fund or funds from which such moneys were invested, provided, however, that income received from the investment of moneys of the local assistance fund, the state purposes fund and the capital construction fund may be credited in whole or in part to one or more of such funds to the extent necessary to reimburse first instance appropriations for interest on temporary obligations issued on behalf of the fund or funds to be credited. Notwithstanding any other provision of this section or of any other general or special

law, all moneys available and retained on deposit for the payment of lottery prizes may be invested in obligations by the comptroller as herein provided, except that such obligations need not mature or be redeemable at the option of the holder within two years of the date of such investment. Income received from such investments may be used for the payment of prizes awarded and made payable in more than one payment, including prizes awarded and made payable throughout the lifetime of the lottery prize winner.

§ 4. Paragraph b of subdivision two of section one hundred five of such law is hereby amended by adding thereto a new subparagraph, to be subparagraph nineteen, to read as follows:

(19) Bonds or notes of the municipal assistance corporation for the city of New York.

§ 5. Title twenty-six of article eight of the public authorities law is hereby amended by adding thereto a new section, to be section twenty-five hundred fifty, to read as follows:

§ 2550. Termination of authority and existence

At such time as notes and bonds of the corporation or notes and bonds of the municipal assistance corporation for the city of New York, or any combination thereof, are outstanding in the aggregate principal amount equal to five hundred twenty million dollars, the purposes for which the corporation was created shall have been satisfied and the corporation shall not be authorized to issue any notes or bonds that would cause such aggregate amount to be exceeded. If the corporation has no notes or bonds outstanding at such time as its authorization to issue notes or bonds terminates, the existence of the corporation shall terminate.

§ 6. Inconsistent provisions of other laws superseded. Insofar as the provisions of this act are inconsistent with the provisions of any other law, general or special, the provisions of this act shall be controlling.

§ 7. If any provision of this act is declared unconstitutional, no other provisions of this act shall be rendered ineffective, unless inseparable from the provision declared to be unconstitutional.

§ 8. This act shall take effect immediately.

PRINCIPAL AMENDMENTS TO THE MAC LEGISLATION

(Pages Add. 41 to Add. 66)

New York City—Financial Emergency Act

CHAPTER 868

An Act in relation to enacting the New York state financial emergency act for the city of New York; to amend the executive law, in relation to the appointment of a special deputy comptroller for the city of New York; to amend the local finance law, in relation to tax receivable notes; to amend the state finance law, in relation to the investment of state funds in bonds and notes issued for any of the corporate purposes of the municipal assistance corporation for the city of New York; to amend the retirement and social security law, in relation to investment of public pension funds in such municipal assistance corporation securities; in relation to enacting the investment of funds by pension and retirement systems for public employees act; to amend the workmen's compensation law, in relation to the purchase by the state insurance fund of bonds and notes of such municipal assistance corporation; to amend the public authorities law, in relation to the issuance and maturity of bonds and notes of such municipal assistance corporation; to amend the state finance law, in relation to the payment of per capita aid to the city of New York; to amend the state finance law, in relation to the establishment of a municipal assistance state aid fund; to amend the education law, in relation to the payment by the city of New York to the city university construction fund; to amend the private housing finance law, in relation to bonds and notes of the New York city housing development corporation; to amend the New York city charter, in relation to the investment of sinking fund moneys of the city of New York in obligations of the municipal assistance corporation for the city of New York; to amend the public authorities law, in relation to the contents of certain agreements with holders of notes or bonds issued by any municipal assistance corporation; to amend the public authorities law, in relation to making bonds or notes of the New York city stabilization reserve corporation legal investments for public authorities; to amend the local finance law, in relation to the authority of municipalities to assign for collateral or pledge its mortgage interest; to amend the private housing finance law, in relation to certain assignments for collateral or pledges by a municipality of its mortgage interest in a project; to amend the local finance law, in relation to assistance to certain municipalities during periods of financial emergency; to amend the public authorities law, in relation to certain payments and funds of the municipal assistance corporation for the city of New York; and making an appropriation for the corporate purposes of the city of New York; and making a first instance appropriation from the local assistance fund to the city of New York.

Approved Sept. 9, 1975, effective as provided in section 26.
Passed on message of necessity. See Const. art. IX, § 2(b)(2), and McKinney's Legislative Law § 44.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 9. Subdivisions two and three of section three thousand thirty-three of the public authorities law, as added by chapter one hundred sixty-nine of the laws of nineteen hundred seventy-five, are hereby amended to read, respectively, as follows:

2. ~~The~~ Subject to the provisions of any contract with noteholders or bondholders, the corporation shall not issue bonds and notes in an aggregate principal amount exceeding ~~three~~ five billion dollars, excluding bonds and notes issued to refund outstanding bonds and notes~~, provided, however, that if bonds and notes are issued by the New York city stabilization reserve corporation pursuant to title twenty-six of article eight of the public authorities law, the maximum principal amount of bonds and notes which may be issued by the corporation shall be decreased by the difference between the principal amount of such bonds and notes issued by the New York city stabilization reserve corporation and the principal amount of such bonds and notes held by the corporation~~.

3. No note or bond (i) shall mature more than ~~fifteen~~ twenty years from the date of the original issue of such note or bond or (ii) ~~or~~ shall

be issued on a date later than five years after the effective date of this act, unless such note or bond is a renewal or refunding of an outstanding note or bond.

§ 10. Section three thousand thirty-three of such law is hereby amended by adding thereto a new subdivision, to be subdivision four, to read as follows:

4. If the bond resolution or other resolution pursuant to which any obligations of the corporation are issued shall designate, with the approval of any emergency financial control board then established for the city or, if none, then with the approval of the mayor, the corporation may hereafter issue obligations which shall, upon maturity, at the election of the holder thereof or exclusively if so provided in such obligations, be receivable at full face value and in lieu of cash in payment of any tax of the city, any installment of estimated tax of the city, or any interest or penalties thereon. Any obligations of the corporation so received in payment of any such tax or installment of estimated tax or interest or penalties shall either be cancelled by the officer receiving the same, as of the date of their receipt, and the cancelled obligations returned to the corporation or be presented to the corporation for payment to the city.

§ 11. Paragraph c of subdivision seven of section fifty-four of the state finance law, as amended by chapter ten hundred seventeen of the laws of nineteen hundred sixty-six, is hereby amended to read as follows:

c. Upon such certification of the amounts payable to counties, cities, villages and towns for town-wide and town outside village purposes, such per capita aid shall be apportioned and paid to the chief fiscal officer of each such locality pursuant to this section on audit and warrant of the state comptroller out of moneys appropriated by the legislature for such purpose to the credit of the local assistance fund in the general fund of the state treasury; provided however that upon such certification of amounts payable to the city of New York, such per capita aid shall be apportioned and paid as follows: (i) any amounts then required to be paid to the city university construction fund pursuant to the city university construction fund act, (ii) any amounts required to be paid to the New York city housing development corporation pursuant to the New York city housing development corporation act, (iii) any amounts required to be paid by the city to the state to repay an advance made in nineteen hundred seventy-two to the city to meet operating expenses of the New York city transit authority, (iv) any amounts required to be paid to the transit construction fund to meet any deficiency in annual payments due such fund by the city, (v) any amounts then required to be paid by the city to the state to repay an advance made in nineteen hundred seventy-four to subsidize the fare of the New York city transit authority, (vi) five hundred thousand dollars to the chief fiscal officer of the city of New York for payment to the trustees of the police pension fund of such city pursuant to the provisions of paragraph e of this subdivision, and (vii) the balance to the special account for the municipal assistance corporation for the city of New York in the municipal assistance state aid fund created pursuant to

section ninety-two-e of the state finance law. Notwithstanding any existing law, no payments of per capita aid payable to the city of New York shall be paid to the state of New York municipal bank board, the New York state sports authority or the transit construction fund so long as amounts of such aid are required to be paid into the municipal assistance state aid fund, and thereafter, after payment of the amounts described in subparagraphs (i) through (vi) the balance shall be paid (A) to the state of New York municipal bond bank to the extent provided by section twenty-four hundred thirty-six of the public authorities law, (B) to the New York state sports authority to the extent provided by section twenty-four hundred sixty-three of the public authorities law, (C) to the transit construction fund to the extent provided by section twelve hundred twenty-five-i of the public authorities law, and thereafter (D) to the city.

§ 12. Such law is hereby amended by adding thereto a new section, to be section ninety-two-e, to read as follows:

§ 92-e. Municipal assistance state aid fund

1. There is hereby established in the custody of the comptroller a special fund to be known as the municipal assistance state aid fund. Within such fund, there is hereby established a special account for each municipal assistance corporation created under article ten of the public authorities law.

2. Such fund shall consist of per capita aid apportioned pursuant to section fifty-four of the state finance law.

3. Such per capita aid apportioned to a city in aid of which a municipal assistance corporation has been created, shall be deposited by the comptroller to the credit of the special account established for the municipal assistance corporation which has been created in aid of such city in order to enable such corporation to fulfill the terms of any agreements made with the holders of its notes and bonds and to carry out its corporate purposes, including the maintenance of the capital reserve fund securing such bonds and notes, and, subject to the provisions of section fifty-four of the state finance law, the balance, if any, shall be paid to the chief fiscal officer of the city in aid of which such corporation has been created as hereinafter provided.

4. Revenues in any special account in the municipal assistance state aid fund shall be kept separate and shall not be commingled with any other moneys in the custody of the comptroller. All deposits of such revenues shall, if required by the comptroller, be secured by obligations of the United States or of the state having a market value equal at all times to the amount of such deposits and all banks and trust companies are authorized to give security for such deposits. Any such revenues in such fund may, in the discretion of the comptroller, be invested in obligations of the United States or of the state or in obligations the principal of and interest on which are guaranteed by the United States or by the state.

5. Upon receipt by the comptroller of a certificate or certificates from the chairman of a municipal assistance corporation that such

corporation requires a payment or payments in order to comply with any agreement with the holders of its notes and bonds and to carry out its corporate purposes, including the maintenance of the capital reserve fund securing such bonds, from the appropriate special account established for such corporation, each of which certificates shall specify the required payment or payments and the date when the payment or payments is required, the comptroller shall pay from such special account on or before the specified date or within thirty days after receipt of such certificate or certificates, whichever is later, to such corporation, as the chairman thereof may direct in any such certificate, the amount or amounts so certified. The comptroller shall from time to time, but in no event later than the fifteenth day of October, January and April and the last day of June of each fiscal year, pay over and distribute to the chief fiscal officer of the city in aid of which such municipal assistance corporation has been created to be paid into the treasury of such city to the credit of the general fund all revenues in the special account established for such corporation in the municipal assistance state aid fund, if any, in excess of the aggregate amount which the chairman of such corporation has certified to the comptroller and which has been previously paid to such corporation as hereinabove authorized. In no event shall the comptroller pay over and distribute any revenues to any person other than the municipal assistance corporation unless and until the aggregate of all payments certified to the comptroller as required by such corporation as of such date in order to comply with its agreements with the holders of its notes and bonds and to carry out its corporate purposes, including the maintenance of the capital reserve fund securing such bonds, which remain unpaid to such corporation shall have been paid in full to such corporation; provided, however, that no person, including such corporation or the holders of its notes or bonds shall have any lien on such revenues and such agreement shall be executory only to the extent of such revenues available to the state in such special account.

6. All payments of moneys from the municipal assistance state aid fund shall be made on the audit and warrant of the state comptroller.

§ 16. Subdivision six of section three thousand twelve of the public authorities law, as added by chapter one hundred sixty-eight of the laws of nineteen hundred seventy-five, is hereby amended to read as follows:

6. Anything in this article ten to the contrary notwithstanding, any agreement or agreements with the holders of notes or bonds issued by any municipal assistance corporation created by or pursuant to any title of this article shall contain a clause stating in substance that any provision in this article or in any such agreement or agreements which relate to taxes imposed under article twelve or sections eleven hundred seven or eleven hundred eight of the tax law of the state or to the funds created by sections ninety-two-b ~~and~~, ninety-two-d or ninety-two-e of the state finance law shall be deemed executory only to the extent of the moneys available to the state in such funds from time to time and no liability on account thereof shall be incurred by the state beyond the moneys available in such funds.

§ 20. Subdivisions three and five of section thirty hundred thirty-six of the public authorities law, as added by chapter one hundred sixty-nine of the laws of nineteen hundred seventy-five, are hereby amended to read, respectively, as follows:

3. The corporation shall create and establish a special fund (herein referred to as capital reserve fund), and shall pay into such capital reserve fund (i) any moneys appropriated and made available by the state for the purposes of such fund, (ii) any proceeds of sale of notes or bonds, to the extent provided in the resolution of the corporation authorizing the issuance thereof, and (iii) any other moneys which may be made available to the corporation for the purpose of such fund from any other source or sources. All moneys held in the capital reserve fund, except as hereinafter provided, shall be used solely for the payment of the principal of bonds of the corporation, as the same mature or otherwise become due, the purchase of bonds of the corporation, the payment of interest on such bonds of the corporation or the payment of any redemption premium required to be paid when such bonds are redeemed prior to maturity. If the amount contained in the capital reserve fund exceeds the amount required to be contained in such fund pursuant to this subdivision three of this section plus any additional amounts required to be contained in such fund pursuant to the terms of issuance of any bonds or notes, such excess moneys may be withdrawn from the capital reserve fund by the corporation; provided, however, that moneys in such fund shall not be withdrawn therefrom

at any time in such amounts as would reduce the amount of such fund to less than the amount of principal and interest maturing or otherwise becoming due in the succeeding calendar year on all bonds of the corporation then outstanding, except for the purpose of paying principal of and interest on such bonds of the corporation maturing or otherwise due or becoming due and for the payment of which other moneys of the corporation are not available. Any income or interest earned by, or increment to, the capital reserve fund due to the investment thereof may be transferred by the corporation to any other fund of the corporation to the extent it does not reduce the amount of the capital reserve fund below the amount of principal and interest maturing or otherwise due or becoming due in the succeeding calendar year on all bonds of the corporation then outstanding.

5. The corporation shall not issue bonds at any time if the amount of principal and interest maturing or otherwise due or becoming due in the succeeding calendar year on such bonds then to be issued and on all other bonds of the corporation then outstanding will exceed the amount of the capital reserve fund requirement at the time of issuance, unless the corporation, at the time of such issuance, shall deposit in the capital reserve fund from the proceeds of the bonds so to be issued, or otherwise, an amount which, together with the amount then in such fund, will be not less than the amount of principal and interest maturing or otherwise due or becoming due in the succeeding calendar year on such bonds then to be issued and on all other bonds of the corporation then outstanding (such amount is herein sometimes referred to as the capital reserve fund requirement). Notwithstanding the foregoing provisions of this subdivision for each of the calendar years set forth below the capital reserve fund requirement, as of any date of calculation, shall equal the percentage set forth opposite such calendar year of the amount of principal and interest maturing or otherwise due or becoming due during such calendar year on all bonds of the corporation outstanding on such date:

Calendar Year	Percentage
1975	0%
1976	0%
1977	25%
1978	50%
1979	75%
1980	100%

§ 21. Such law is hereby amended by adding thereto a new section, to be section thirty hundred thirty-six-a, to read as follows:

§ 3036-a. Further payments to the corporation; additional funds of the corporation

1. In addition to the total amount certified by such chairman for such fiscal year, all as referred to in subdivision one of section three thousand thirty-six, the chairman shall at the same time certify to the state comptroller and to the mayor a schedule setting forth additional cash requirements of the corporation which shall be equal to: (i) the amounts which are required to be deposited in the capital reserve fund authorized to be created and established pursuant to subdivision two of this section (in this section called the capital reserve fund) during such fiscal year in order to maintain the capital reserve fund at the level required in accordance with subdivision four of this section;

(ii) the amounts required to be deposited in the bond service fund of the corporation to pay all interest and all payments of principal and redemption premium, if any, on notes and bonds payable from the sources hereinafter identified in this section and maturing or otherwise coming due during such fiscal year; and (iii) the amounts required to be deposited in the operating fund of the corporation heretofore established, as determined by the corporation, to meet the operating requirements and other expenses of the corporation during such fiscal year. If any increase shall occur in such additional cash requirements specified above, or if payments are required at a time or times earlier than previously certified or if the city shall for any reason fail to make timely payment of the principal and accrued interest due on any obligation issued by the city to the corporation and maturing within the same fiscal year, such chairman shall certify a revised schedule of such additional cash requirements for such fiscal year to the state comptroller and to the mayor. The schedule accompanying each certification (or revision thereof) shall provide for such payment dates as the corporation deems appropriate to assure that sufficient funds will be available from the sources identified below to enable it to meet its current obligations under this section as they come due. Upon receipt of such certification, or any revision thereof, the state comptroller shall pay such amount to the corporation for deposit in the appropriate funds referred to in this section, in accordance with such certification from the special account established for the corporation in the municipal assistance state aid fund in accordance with subdivision one of section ninety-two-e of the state finance law and, subject to agreements with outstanding bond and note holders of the corporation, from the special account established for the corporation in the municipal assistance tax fund, in accordance with subdivision one of section ninety-two-d of the state finance law, including any amount transferred to the municipal assistance tax fund from the stock transfer tax fund pursuant to subdivision four of section ninety-two-b of the state finance law. Any such payment shall be made within thirty days of receipt of the certification or at the time specified in the certification, whichever is later; provided that any such amounts shall have been first appropriated by the state for such purpose or shall have been otherwise made available. Any amount paid to the corporation from such municipal assistance state aid fund shall be deducted from the amount otherwise payable to the city as per capita aid pursuant to section fifty-four of the state finance law and shall not obligate the state to make, nor entitle the city to receive, any additional payments of per capita aid. Any amount so paid to the corporation from the municipal assistance tax fund shall, in addition to the amount deducted pursuant to subdivision one of section three thousand thirty-six, be deducted from the amount otherwise payable to the city from the municipal assistance tax fund and shall not obligate the state to make, nor entitle the city to receive, any additional payments from such municipal assistance tax fund.

2. The corporation shall create and establish a capital reserve fund as an additional special fund, and shall pay into such capital reserve fund (i) any moneys appropriated and made available by the state for the purposes of such fund, (ii) any proceeds of sale of notes or bonds, to the extent provided in the resolution of the corporation authorizing the issuance thereof, and (iii) any other moneys which may be made available to the corporation for the purpose of such fund from any other source or sources. All moneys held in the capital reserve fund, except as hereinafter provided, shall be used solely for the payment of the principal of bonds secured by such capital reserve fund of the corporation, as the same mature or otherwise become due, the purchase of such bonds of the corporate, the payment of interest on such bonds of the corporation or the payment of any redemption premium required to be paid when such bonds are redeemed prior to maturity. If the amount contained in the capital reserve fund exceeds the amount required to be contained in such fund pursuant to this subdivision of this section plus any additional amounts required to be contained in such fund pursuant to the terms of issuance of any bonds or notes secured by such capital reserve fund, such excess moneys may be withdrawn from the capital reserve fund by the corporation; provided, however, that moneys in such fund shall not be withdrawn therefrom at any time in such amounts as would reduce the amount of such fund to less than the amount of principal and interest maturing or otherwise due or becoming due in the succeeding calendar year on all bonds of the corporation secured by such capital reserve fund then outstanding, except for the purpose of paying principal of and interest on such bonds of the corporation maturing or otherwise becoming due and for the payment of which other moneys of the corporation are not available. Any income or interest earned by, or increment to, the capital reserve fund due to the investment thereof may be transferred by the corporation to any other fund of the corporation to the extent it does not reduce the amount of the capital reserve fund below the amount of principal and interest maturing or otherwise due or becoming due in the succeeding calendar year on all bonds of the corporation secured by such capital reserve fund then outstanding.

3. In order further to assure the maintenance of the capital reserve fund, there shall be annually appropriated and paid to the corporation for deposit in the capital reserve fund such sum, if any, as shall be certified by the chairman to the governor and director of the budget as necessary to restore the capital reserve fund to an amount equal to the capital reserve fund requirement. The chairman of the board of directors of the corporation shall, annually, on or before December first, make and deliver to the governor and director of the budget his certificate stating the sum, if any, required to restore the capital reserve fund to the amount aforesaid; and the sum or sums so certified, if any, shall be appropriated and paid to the corporation during the then current state fiscal year.

4. The corporation shall not issue bonds secured by the capital reserve fund at any time if the amount of principal and interest matur-

ing or otherwise due or becoming due in the succeeding calendar year on such bonds then to be issued and on all other such bonds of the corporation then outstanding will exceed the amount of the capital reserve fund requirement at the time of issuance, unless the corporation, at the time of such issuance, shall deposit in the capital reserve fund from the proceeds of the bonds so to be issued, or otherwise, an amount which, together with the amount then in such fund, will be not less than the amount of principal and interest maturing or otherwise due or becoming due in the succeeding calendar year on such bonds then to be issued and on all other bonds of the corporation secured by such capital reserve fund then outstanding (such amount is herein sometimes referred to as the capital reserve fund requirement). Notwithstanding the foregoing provisions of this subdivision for each of the calendar years set forth below the capital reserve fund requirement, as of any date of calculation, shall equal the percentage set forth opposite such calendar year of the amount of principal and interest maturing or otherwise due or becoming due during such calendar year on all bonds of the corporation secured by the capital reserve fund outstanding on such date:

Calendar Year	Percentage
1975	0%
1976	0%
1977	25%
1978	50%
1979	75%
1980	100%

5. In computing the amount of the capital reserve fund for the purposes of this section securities in which all or a portion of such fund shall be invested shall be valued at par or if purchased at other than par, at amortized value.

6. The corporation shall create a bond service fund.

New York City—Financial Emergency Act—Amendments

CHAPTER 870

An Act to amend a chapter of the laws of nineteen hundred seventy-five, entitled "An Act in relation to enacting the New York state financial emergency act for the city of New York; to amend the executive law, in relation to the appointment of a special deputy comptroller for the city of New York; to amend the local finance law, in relation to tax receivable notes; to amend the state finance law, in relation to the investment of state funds in bonds and notes issued for any of the corporate purposes of the municipal assistance corporation for the city of New York; to amend the retirement and social security law, in relation to investment of public pension funds in such municipal assistance corporation securities; in relation to enacting the investment of funds by pension and retirement systems for public employees act; to amend the workmen's compensation law, in relation to the purchase by the state insurance fund of bonds and notes of such municipal assistance corporation; to amend the public authorities law, in relation to the issuance and maturity of bonds and notes of such municipal assistance corporation; to amend the state finance law, in relation to the payment of per capita aid to the city of New York; to amend the state finance law, in relation to the establishment of a municipal assistance state aid fund; to amend the education law, in relation to the payment by the city of New York to the city university construction fund; to amend the private housing finance law, in relation to bonds and notes of the New York city housing development corporation; to amend the New York city charter, in relation to the investment of sinking fund moneys of the city of New York in obligations of the municipal assistance corporation for the city of New York; to amend the public authorities law, in relation to the contents of certain agreements with holders of notes or bonds issued by any municipal assistance corporation; to amend the public authorities law, in relation to making bonds or notes of the New York city stabilization reserve corporation legal investments for public authorities; to amend the local finance law, in relation to the authority of municipalities to assign for collateral or pledge its mortgage interest; to amend the private housing finance law, in relation to certain assignments for collateral or pledges by a municipality of its mortgage interest in a project; to amend the local finance law, in relation to assistance to certain municipalities during periods of financial emergency; to amend the public authorities law, in relation to certain payments and funds of the municipal assistance corporation for the city of New York; and making an appropriation for the corporate purposes of the city of New York; and making a first instance appropriation

from the local assistance fund to the city of New York" [1] in relation to the legislative intent thereof; to amend the New York State Financial Emergency Act for the City of New York, in relation to the definition of the term "Covered organization"; the compliance of certain contracts and obligations with the requirements of the financial plan; the approval of certain regulations; the review of certain proposed borrowing; the issuance of certain orders; the development of a financial plan; the time for delivery of certain estimates of revenues; the formulation and adoption and time of submission of the financial plan; requirements for items of aggregate expenditures; the deposit of revenues and application of funds in the emergency control board fund; the application of the wage freeze to certain contracts; to amend the retirement and social security law in relation to investments in municipal assistance corporation obligations; to amend the investment of funds by pension and retirement systems for public employees act in relation to investments by such systems in obligations of the municipal assistance corporation; to amend the workmen's compensation law, in relation to investments by the state insurance fund in obligations of the municipal assistance corporation; to amend the public authorities law, in relation to certain obligations of the municipal assistance corporation; the state finance law, in relation to the apportionment of certain amounts payable to the city of New York as per capita aid and the municipal assistance state aid fund; the education law, in relation to financial assistance by the city of New York to the dormitory authority; the private housing finance law, in relation to the amount of outstanding bonds and notes of the New York city housing development corporation; to amend the local finance law, in relation to assignment or pledge by a municipality of its mortgage interest in certain cases; notice of limitation of provisions; notice of claim; demand for payment; petition; petition of municipality; repayment plan; court approval and continuation of stay in certain cases and to repeal section 85.10 thereof relating to presentation of claims and commencement of actions against municipalities in certain cases and to amend section twenty-two of such chapter of the laws of nineteen hundred seventy-five, in relation to the availability of funds appropriated therein to the city of New York; the repayment by the city thereof; the apportionment of certain other funds of the city in default of such repayment.

[1] 1975 McKinney Session Laws, Chapter 868.
Approved and effective Sept. 9, 1975.
Passed on message of necessity. See Const. art. IX, § 2(b)(2), and McKinney's Legislative Law § 44.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 16. Subdivision four of section three thousand thirty-three of the public authorities law, as added by such chapter is hereby amended to read as follows:

4. If the bond resolution or other resolution pursuant to which any obligations of the corporation are issued shall designate, with the approval of any emergency financial control board then established for the city or, if none, then with the approval of the mayor, the corporation may hereafter issue obligations which shall, upon maturity, at the election of the holder thereof ~~or exclusively~~ if so provided in such obligations, be receivable at full face value and in lieu of cash in pay-

ment of any tax of the city, any installment of estimated tax of the city, or any interest or penalties thereon. Any obligations of the corporation so received in payment of any such tax or installment of estimated tax or interest or penalties shall ~~either be cancelled by the officer receiving the same, as of the date of their receipt, and the cancelled obligations returned to the corporation or~~ be presented to the corporation for payment to the city.

§ 17. Paragraph c of subdivision seven of section fifty-four of the state finance law, as amended by such chapter, is hereby amended to read as follows:

c. Upon such certification of the amounts payable to counties, cities, villages and towns for town-wide and town outside village purposes, such per capita aid shall be apportioned and paid to the chief fiscal officer of each such locality pursuant to this section on audit and warrant of the state comptroller out of moneys appropriated by the legislature for such purpose to the credit of the local assistance fund in the general fund of the state treasury; provided however that upon such certification of amounts payable to the city of New York, such per capita aid shall be apportioned and paid as follows: ~~(i) any amounts then required to be paid to the city university construction fund pursuant to the city university construction fund act, (ii) any amounts required to be paid to the New York city housing development corporation pursuant to the New York city housing development corporation act, (iii) any amounts required to be paid by the city to the state to repay an advance made in nineteen hundred seventy-two to the city to meet operating expenses of the New York city transit authority, (iv) any amounts required to be paid to the transit construction fund to meet any deficiency in annual payments due such fund by the city, (v) any amounts then required to be paid by the city to the state to repay an advance made in nineteen hundred seventy-four to subsidize the fare of the New York city transit authority, (vi) five hundred thousand dollars to the chief fiscal officer of the city of New York for payment to the trustees of the police pension fund of such city pursuant to the provisions of paragraph e of this subdivision, and (vii) the balance to the special account for the municipal assistance corporation for the city of New York in the municipal assistance state aid fund created pursuant to section ninety-two-e of the state finance law.~~ (i) any amounts required to be paid to the city university construction fund pursuant to the city university construction fund act, (ii) any amounts required to be paid to the New York city housing development corporation pursuant to the New York city housing development corporation act, (iii) any amounts required to be paid by the city to the New York city transit authority pursuant to the provisions of chapter seven of the laws of nineteen hundred seventy-two, (iv) any amounts required to be paid by the city to the state to repay an advance made in nineteen hundred seventy-four to subsidize the fare of the New York city transit authority, (v) five hundred thousand dollars to the chief fiscal officer of the city of New York for payment to the trustees of the police pension fund of such city pursuant to the provisions of paragraph e of this subdivision, (vi) eighty million dollars to the special account for the municipal assistance corporation for the city of New York in the municipal assistance tax fund created pursuant to section ninety-two-d of the state finance law to the extent that such amount has been included by the municipal assistance corporation for the city

of New York in any computation for the issuance of bonds on a parity with outstanding bonds pursuant to a contract with the holders of such bonds prior to the issuance of any other bonds secured by payments from the municipal assistance state aid fund created pursuant to section ninety-two-e of the state finance law, and (vii) the balance to the special account for the municipal assistance corporation for the city of New York in the municipal assistance state aid fund created pursuant to section ninety-two-e of the state finance law. Notwithstanding any existing law, no payments of per capita aid payable to the city of New York shall be paid to the state of New York municipal bond bank ~~board~~ agency, the New York state sports authority or the transit construction fund so long as amounts of such aid are required to be paid into the municipal assistance state aid fund, and thereafter, after payment of the amounts described in subparagraphs (i) through ~~(vi)~~ (vii) the balance shall be paid (A) to the state in repayment of the appropriation of two hundred fifty million dollars made to the city pursuant to the chapter of the laws of nineteen hundred seventy-five providing emergency financial assistance to the city of New York at the extraordinary session held in such year, as amended, (B) to the state of New York municipal bond bank agency to the extent provided by section twenty-four hundred thirty-six of the public authorities law, ~~(B)~~ (C) to the New York state sports authority to the extent provided by section twenty-four hundred sixty-three of the public authorities law, ~~(C)~~ (D) to the transit construction fund to the extent provided by section twelve hundred twenty-five-i of the public authorities law, and thereafter ~~(D)~~ (E) to the city.

§ 18. Subdivision two of section ninety-two-e of such law, as added by such chapter, is hereby amended to read as follows:

2. Such fund shall consist of per capita aid apportioned thereto pursuant to section fifty-four of the state finance law.

§ 27. Subdivision two of section ninety-two-d of the state finance law, as added by chapter one hundred sixty-eight of the laws of nineteen hundred seventy-five, is hereby amended to read as follows:

2. Such fund shall consist of the revenues derived from municipal assistance sales and compensating use taxes imposed by section eleven hundred seven and eleven hundred eight of the tax law and such amount of per capita aid apportioned and paid into such fund pursuant to paragraph e of subdivision seven of section fifty-four of this chapter.

New York City—Municipal Assistance Corporation

CHAPTER 889

An Act to amend the public authorities law, in relation to the monetary limitation on certian outstanding amounts paid to the city of New York for operating expenses and the amount of certain short-term obligations that may be issued until June thirtieth, nineteen hundred seventy-six by the city of New York and by the municipal assistance corporation for the city of New York.

Approved and effective Nov. 26, 1975.

Passed on message of necessity. See Const. art. IX, § 2(b)(2), and McKinney's Legislative Law § 44.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section three thousand thirty-seven of the public authorities law, as added by chapter one hundred sixty-nine of the laws of nineteen hundred seventy-five, is hereby amended to read as follows:

§ 3037. Payments to or purchases of obligations of the city

In the event that the mayor from time to time certifies to the corporation an amount required by the city to enable it to pay, at maturity, the principal of and interest on any short-term obligations of the city, or to pay operating expenses of the city, the corporation may (i) pay to the city, or (ii) purchase from the city obligations hereafter issued by the city in an amount equivalent to, part or all of such certified amount. Moneys paid to the city pursuant to clause (i) or (ii) of this section shall be held in trust for the payment of short-term obligations or shall be used to pay operating expenses of the city. Any obligations issued by the city and purchased by the corporation pursuant to this section shall mature on a date not later than fifteen years from the original date of issue of such obligations. The corporation shall not make any payment to the city, or purchase any obligations from the city, pursuant to this section unless the city shall have agreed to observe the conditions set forth in section three thousand thirty-eight of this chapter, subject to such modifications as are permitted thereunder. The outstanding amounts paid to the city for operating expenses pursuant to clause (i) and clause (ii) of this ~~subdivision~~ section shall not exceed on billion ~~seven~~ nine hundred twenty-five million dollars, provided that not more than nine hundred million dollars shall be obligations maturing in a fiscal year succeeding the fiscal year in which issued (of which not less than seven hundred fifty million dollars shall be applied for welfare or public education purposes, as to which state assistance payments have been or will be advanced to the city) and shall be evidenced by city obligations, and any balance shall be short term obligations payable in the fiscal year in which issued.

§ 2. Paragraph b of subdivision nine of section three thousand thirty-eight of such law, such section having been added by chapter one hundred sixty-nine of the laws of nineteen hundred seventy-five, is hereby amended to read as follows:

b. In addition to the foregoing limitation the city shall not, at any date, permit the aggregate principal amount of its outstanding short-term obligations (excluding bond anticipation notes) plus the aggregate principal amount of all notes and bonds issued by the corporation (less any notes or bonds refunded or renewed and less any short-term obligations of the city then held by the corporation and less any short-term obligations of the city issued and payable within the same fiscal year) to exceed four billion five hundred millions dollars plus, in the discretion of the board of directors, an additional amount not exceeding five hundred million dollars plus, in the discretion of the board of directors, until June thirtieth, nineteen hundred seventy-six, a further additional amount not exceeding one hundred million dollars.

§ 3. If any provision of this act is declared unconstitutional, or other provisions of this act shall be rendered ineffective, unless inseparable from the provision declared to be unconstitutional.

§ 4. This act shall take effect immediately.

New York City—Bonds and Notes—Issuance, Etc.

CHAPTER 891

An Act to amend the public authorities law, in relation to the issuance of obligations by the municipal assistance corporation for the city of New York and in relation to increasing the monetary limitation on certain outstanding amounts paid by the corporation to the city of New York for operating expenses and increasing the amount of short-term obligations that may be issued until June thirtieth, nineteen hundred seventy-six by the city of New York and by such municipal assistance corporation.

Approved and effective Dec. 5, 1975.

Passed on Message of necessity. See Const. art. IX, § 2(b)(2), and McKinney's Legislative Law § 44.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision two of section three thousand thirty-three of the public authorities law, as amended by chapter eight hundred sixty-eight of the laws of nineteen hundred seventy-five, is hereby amended to read as follows:

2. Subject to the provisions of any contract with noteholders or bondholders, the corporation shall not issue bonds and notes in an aggregate principal amount exceeding five billion two hundred fifty million dollars, excluding bonds and notes issued to refund outstanding bonds and notes.

§ 2. Section three thousand thirty-seven of such law, as amended by chapter eight hundred eighty-nine of the laws of nineteen hundred seventy-five, is hereby amended to read as follows:

§ 3037. Payments to or purchases of obligations of the city

In the event that the mayor from time to time certifies to the corporation an amount required by the city to enable it to pay, at maturity, the principal of and interest on any short-term obligations of the city, or to pay operating expenses of the city, the corporation may (i) pay to the city, or (ii) purchase from the city obligations hereafter issued by the city in an amount equivalent to, part or all of such certified amount. Moneys paid to the city pursuant to clause (i) or (ii) of this section shall be held in trust for the payment of short-term obligations or shall be used to pay operating expenses of the city. Any obligations issued by the city and purchased by the corporation pursuant to this section shall mature on a date not later than fifteen years from the original date of issue of such obligations. The corporation shall not make any payment to the city, or purchase any obligations from the city, pursuant to this section unless the city shall have agreed to observe the conditions set forth in section three thousand thirty-eight of this chapter, subject to such modifications as are permitted thereunder. The outstanding amounts paid to the city for operating expenses pursuant to clause (i) and clause (ii) of this section shall not exceed ~~one~~ two

billion ~~nine hundred twenty-five million~~ dollars, provided that not more than nine hundred million dollars shall be obligations maturing in a fiscal year succeeding the fiscal year in which issued (of which not less than seven hundred fifty million dollars shall be applied for welfare or public education purposes, as to which state assistance payments have been or will be advanced to the city) and shall be evidenced by city obligations, and any balance shall be short term obligations payable in the fiscal year in which issued.

§ 3. Paragraph b of subdivision nine of section three thousand thirty-eight of such law, as amended by chapter eight hundred eighty-nine of the laws of nineteen hundred seventy-five, is hereby amended to read as follows:

b. In addition to the foregoing limitation the city shall not, at any date, permit the aggregate principal amount of its outstanding short-term obligations (excluding bond anticipation notes) plus the aggregate principal amount of all notes and bonds issued by the corporation (less any notes or bonds refunded or renewed and less any short-term obligations of the city then held by the corporation and less any short-term obligations of the city issued and payable within the same fiscal year) to exceed four billion five hundred million dollars plus, in the discretion of the board of directors, an additional amount not exceeding five hundred million dollars plus, in the discretion of the board of directors, until June thirtieth, nineteen hundred seventy-six, a further additional amount not exceeding ~~one~~ two hundred million dollars.

§ 4. If any provision of this act is declared unconstitutional, no other provisions of this act shall be rendered ineffective, unless inseparable from the provision declared to be unconstitutional.

§ 5. This act shall take effect immediately.

New York City—Expense Budget—Requirements Clarification

CHAPTER 185

An Act to amend the public authorities law, in relation to clarification of certain requirements for the expense budget of the city of New York

Approved and effective June 1, 1977.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision four of section three thousand thirty-eight of the public authorities law, as added by chapter one hundred sixty-nine of the laws of nineteen hundred seventy-five, is hereby amended to read as follows:

4. Beginning with the fiscal year ending June thirtieth, nineteen hundred seventy-seven and for each fiscal year thereafter, the city shall deliver a proposed expense budget to the corporation. Delivery to the corporation shall be made concurrently with the initial submission of the proposed expense budget to the board of estimate and the city council, but in any event not later than forty-five days prior to the beginning of such fiscal year. Beginning with the fiscal year

ending June thirtieth, nineteen hundred seventy-eight, and for each fiscal year thereafter, the proposed expense budget submitted to the corporation shall be prepared in accordance with the accounting principles set forth in subdivision two of this section (except as may be modified by the application of subdivision five of this section). Such budget shall be identical to the proposed expense budget submitted to the board of estimate and city council except for any differences resulting from the application of such accounting principles. The proposed expense budget delivered to the corporation shall be accompanied by (i) a statement setting forth in detail the assumptions of income and expense used in its preparation, (ii) a reconciliation of the differences, if any, between such proposed expense budget and the proposed expense budget submitted to the board of estimate and the city council, and (iii) a certificate of the mayor stating that such assumptions are reasonable and that operation within the budget is feasible and explaining the reasons for any differences therein from the proposed expense budget submitted to the board of estimate and the city council. The city shall in every fiscal year adopt and maintain an expense budget in which the total of all income items equals or exceeds the total of all expenditure items. For the fiscal year ending June thirtieth, nineteen hundred seventy-eight and each subsequent fiscal year the total of all income items shall also equal or exceed the total of all expenditure items in each expense budget as adopted by the city, after the adjustments, if any, required to conform to the accounting principles set forth in subdivision two of this section (except as may be modified by the application of subdivision five of this section) and the city shall also maintain a budget balanced in accordance with such accounting principles. Notwithstanding any other provision of this section to the contrary, any expense item in the expense budget for any fiscal year, which item relates to contributions by the city or other public employer to any retirement system or pension fund, shall include only the amounts which, under the provisions of law, rules or regulations expressly prescribing the method of determining employer contributions to such retirement system or pension fund and the time of payment thereof, are due and payable in such fiscal year, and no such expense item shall include amounts for any such contribution which, under such laws, rules or regulations, do not become due and payable in such fiscal year.

§ 2. Subdivision five of section three thousand thirty-eight of such law is hereby amended by adding thereto a new paragraph, to be paragraph (f), to read as follows:

(f) To implement this subdivision, and in order to provide full disclosure of all expense items properly includable only in the expense budget, the city shall include in its expense budget for each fiscal year by appropriation all expense items which are included in its capital budget for such fiscal year pursuant to paragraph e of this subdivision including judgments and claims related to other than capital projects, such items shall be stated separately and distinctly and the city may include in such expense budget as items of income, in addition to all other items of income properly includable in such expense budget pursuant to this section, all amounts to be applied to the payment of such expense items, which amounts may be derived from any source available to the city during such fiscal year, provided that such income shall be listed separately and distinctly.

§ 3. Paragraph (c) of subdivision five of section three thousand thirty-eight of such law, such section having been added by chapter one hundred sixty-nine of the laws of nineteen hundred seventy-five, is hereby amended to read as follows:

(c) Unless the corporation shall approve the inclusion of a greater amount with respect to any such fiscal year, the aggregate amount of all such expense items included in the capital budget, including judgments and claims related to other than capital projects, for the fiscal year ending June thirtieth, nineteen hundred seventy-seven and for each following fiscal year shall be reduced at the cumulative rate of ten percent per year from the aggregate amount for the nineteen hundred seventy-six fiscal year set forth in the report provided for under paragraph (b) of this subdivision (or set forth in the certification under paragraph (a) of this subdivision if such report has not then been prepared). For the fiscal year ending June thirtieth, nineteen hundred eighty-six and thereafter, no such expense items shall be included in the city's capital budget;

§ 4. This act shall take effect immediately.

Laws of New York 1977
Ch. 456
Approved and Effective July 19, 1977

AN ACT to amend the public authorities law, in relation to the issuance of obligations by the municipal assistance corporation for the city of New York and in relation to increasing the amount of short-term obligations that may be issued by the city of New York and obligations that may be issued by such municipal assistance corporation

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision two of section three thousand thirty-three of the public authorities law, as amended by chapter eight hundred ninety-one of the laws of nineteen hundred seventy-five, is hereby amended to read as follows:

2. Subject to the provisions of any contract with noteholders or bondholders, the corporation shall not issue bonds and notes in an aggregate principal amount exceeding five billion [two] *eight* hundred [fifty] million dollars, excluding bonds and notes issued to refund outstanding bonds and notes.

§ 2. Paragraph a of subdivision nine of section three thousand thirty-eight of such law, as added by chapter one hundred sixty-nine of the laws of nineteen hundred seventy-five, is hereby amended to read as follows:

a. The city shall not, at any time permit the aggregate principal amount of its outstanding short-term obligations plus the aggregate principal amount of all notes and bonds issued by the corporation (less any notes or bonds of the corporation which have been refunded, [or] renewed, *redeemed, paid or cancelled and less any notes and bonds deemed to have been paid pursuant to the provisions of any contract with noteholders or bondholders* and less any short-term obligations of the city then held by the corporation) to exceed (i) six billion [one] *six* hundred million (hereinafter called the base debt limit) plus (ii) an additional amount, not exceeding ten percent of the base debt limit; provided, however, that during the fiscal years ending June 30, 1976 and 1977 such additional amount may not exceed thirty percent of the base debt limit, during the fiscal year ending June 30, 1978 the additional amount may not exceed twenty-five per cent of the base debt limit, during the fiscal year ending June 30, 1979, the additional amount

EXPLANATION—Matter in italics is new; matter in brackets [ ] is old law to be omitted.

may not exceed twenty per cent of the base debt limit, and during the fiscal year ending June 30, 1980 the additional amount may not exceed fifteen per cent of the base debt limit.

§ 3. Paragraph b of subdivision nine of section three thousand thirty-eight of such law, as amended by chapter eight hundred ninety-one of the laws of nineteen hundred seventy-five, is hereby amended to read as follows:

b. In addition to the foregoing limitation the city shall not, at any date, permit the aggregate principal amount of its outstanding short-term obligations (excluding bond anticipation notes) plus the aggregate principal amount of all notes and bonds issued by the corporation (less *(i)* any notes or bonds *which have been* refunded or renewed *and any notes or bonds in an amount equal to the aggregate principal amount of bond anticipation notes of the city acquired by the corporation, whether or not then held by the corporation (except bond anticipation notes of the city acquired by the corporation in consideration of the surrender by the corporation to the city of bond anticipation notes of the city)*, **[**less**]** *(ii)* any short-term obligations of the city then held by the corporation *other than bond anticipation notes* and **[**less**]** *(iii)* any short-term obligations of the city issued and payable within the same fiscal year) to exceed four billion five hundred million dollars plus, in the discretion of the board of directors, an additional amount not exceeding five hundred million dollars plus, in the discretion of the board of directors, until June thirtieth, nineteen hundred seventy-six, a further additional amount not exceeding two hundred million dollars.

§ 4. If any provision of this act is declared unconstitutional, no other provisions of this act shall be rendered ineffective, unless inseparable from the provision declared to be unconstitutional.

§ 5. This act shall take effect immediately.

Supreme Court, U. S.
FILED
AUG 31 1977
MICHAEL RODAK, JR., C

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-114

WILLIAM J. QUIRK and LEON E. WEIN,

Plaintiffs-Appellants,

against

MUNICIPAL ASSISTANCE CORPORATION FOR THE CITY OF NEW YORK, *et al.*,

Defendants-Appellees.

MOTION TO DISMISS OR AFFIRM

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Intervenor-Appellee
appearing pro se
Office & P.O. Address
Two World Trade Center
New York, New York 10047
Tel. No. (212) 488-3391

SAMUEL A. HIRSHOWITZ
First Assistant Attorney General

SHIRLEY ADELSON SIEGEL
Assistant Attorney General
of Counsel

TABLE OF CONTENTS

	PAGE
Opinion Below	1
Jurisdiction	2
Statutes Involved	2
Question Presented	2
Statement of the Case	2
ARGUMENT:	
(1) The Court lacks jurisdiction as appellants can show no injury, hence have no standing and no "case or controversy" is presented for adjudication	3
(2) The Court lacks § 1257(2) jurisdiction over issues not litigated below	5
(3) Assuming Article III jurisdiction, summary affirmance is indicated as no substantial question under the Contract Clause is presented warranting plenary consideration by the Court	6
A. The alleged contract never existed	6
B. There was no unconstitutional impairment in any event	8
Conclusion	9

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-114

WILLIAM J. QUIRK and LEON E. WEIN,

Plaintiffs-Appellants,

against

MUNICIPAL ASSISTANCE CORPORATION FOR THE CITY OF NEW YORK, *et al.*,

Defendants-Appellees.

MOTION TO DISMISS OR AFFIRM

Appellee Louis J. Lefkowitz, Attorney General of the State of New York, intervened in the above-entitled action pursuant to New York Executive Law § 71 with leave of the State Court of Appeals to support the validity of the statutes challenged by the complaint, and here moves pursuant to Rule 16 of the Rules of this Court that the final judgment of the Court of Appeals of the State of New York be affirmed or, in the alternative, that this appeal be dismissed.

Opinion Below

The opinion of the Court of Appeals of the State of New York, dated April 26, 1977, is reported at 41 N Y 2d 644 and is also attached to appellants' Jurisdictional Statement ("J.S.") as pages A1 to A4 of Appendix A.

Jurisdiction

Appellants invoke the jurisdiction of this Court under 28 U.S.C. § 1257(2).

Statutes Involved

This action involves Chapters 168 and 169 of the New York Laws of 1975. Chapters 168 and 169 added Article Ten to the Public Authorities Law (Book 42 of McKinney's Consolidated Laws), constituting the New York State Municipal Assistance Corporation Act, and made related amendments to the Tax Law and State Finance Law.

Question Presented

Did the enactment of the Municipal Assistance Corporation Act impair contract rights of the plaintiff bondholders of the City of New York in violation of Article I, section 10, clause 1 of the United States Constitution?

Statement of the Case

In June 1975, having found that municipalities in the State were having difficulty in marketing their securities to obtain cash for essential services and for debt service on outstanding securities, Public Authorities Law § 3002 (McKinney Supp. 1970-75), the State Legislature created the Municipal Assistance Corporation for the City of New York ("MAC"), a State instrumentality and public benefit corporation, *id.* § 3033. MAC was designed to sell bonds and to pay or lend to the City the funds received from such sales. To finance the operations of MAC, the Legislature suspended the enabling authority given the City to impose a sales tax up to 4%, which was being collected by the State within the City of New York for City purposes, and imposed a 4% sales tax the receipts from

which would first be available, subject to annual appropriation by the Legislature, for the corporate purposes of MAC so long as and to the extent required, the balance to be paid over to the City. Moreover, the Legislature provided that stock transfer tax revenues theretofore transmitted to the City of New York would first be subject to appropriation for MAC if and to the extent that such sales tax revenues proved inadequate. In addition, Chapters 168 and 169 provided for various fiscal controls and reforms in financial management in the City of New York.

The Court may take judicial notice that under the New York State Financial Emergency Act for the City of New York, as amended, adopted in September 1975 (Chapters 868-870 inclusive) in response to New York City's deepening fiscal crisis and imposing a modicum of direct State control over the City's financial plan, and under the Note Moratorium Law adopted in November 1975 (Chapter 875), the right of the City bondholders to prompt payment of interest and principal has been scrupulously respected, *e.g.* Financial Emergency Act § 3 subd. 2, § 8 subd. 3c(i) and d(i), and § 9 subd. 4 and 5(i).

Appellants sue as bondholders of the City of New York, complaining that the creation of MAC unconstitutionally impaired their contract rights. The history of the litigation is summarized at J.S. 19-20.

ARGUMENT

(1)

The Court lacks jurisdiction as appellants can show no injury, hence have no standing and no "case or controversy" is presented for adjudication.

The irony of this action is that on any objective view of the measures which were adopted by the State to relieve New York City's fiscal crisis, it is the noteholders, the jobholders, and the beneficiaries of the City's various

programs who were sacrificed—not the bondholders. Indeed, the noteholders protested in both the State and the Federal courts that the note moratorium was unconstitutional *inter alia* because they were denied equal protection vis-à-vis the bondholders, whose obligations are being fully honored by the City. *Ropico, Inc.* v. *City and MAC; Avins* v. *City,* 415 F. Supp. 577 (S.D.N.Y. 1976); *Flushing National Bank* v. *MAC et al.,* 52 A D 2d 84 (1st Dept. 1976), rev'd on other grounds, 40 N Y 2d 731 (1976).*

A further irony is that MAC alone is responsible for the billions of dollars in cash infused into the City's arteries—at this writing in excess of 4.6 billion since 1975—which has enabled the City to date to avoid bankruptcy.** The alternative to MAC was an uncertain and threatening prospect for bondholders while *per contra* MAC enhanced the City's ability to meet its obligation to its bondholders; this was both its purpose and its effect.

Yet these plaintiffs-appellants, suing as City bondholders, maintain that by creating MAC the Legislature acted unconstitutionally. The proposition is frivolous. Not only is appellants' view of the law erroneous, but also, their action is clearly wanting in the justiciability demanded by Article III.

It is axiomatic that an appeal will not lie to this Court under 28 U.S.C. § 1257 unless the action presents a case or controversy within the meaning of Article III, *Poe* v. *Ullman,* 367 U.S. 497 (1961), and appellants have the requisite standing, *Braxton County Court* v. *West Virginia,* 208 U.S. 192 (1908).

---

* The note moratorium was held violative of the "faith and credit" clause of the State Constitution.

** The Seasonal Financing Act of 1975, P.L. 94-143, due to expire June 30, 1978, deals with the City's annual "cash flow" problem; all advances are fully repaid by the end of each fiscal year.

Appellants' position was improved by the creation of MAC. They assert at best a theoretical injury.

The speculative tenor of the complaint, a basis for dismissal under *Simon* v. *Eastern Kentucky Welfare Rights Organization,* 426 U.S. 26 (1976), and authorities there cited, raises questions about the motivation of litigants who are not injured in a practical workaday sense. The explanation quite simply is an academic interest. Overlooking for the moment the unpardonable attempted broadening of the issue on this appeal discussed *post,* it is plain that appellants are pursuing a highly personal view of the local finance article of the 1938 New York Constitution which rests on their reading of the record of the constitutional convention and is contrary to all the decisions of the New York courts since the 1938 Constitution became effective.* This is academic in the extreme and is a far cry from presenting a justiciable controversy for this Court.

(2)

The Court lacks § 1257(2) jurisdiction over issues not litigated below.

The State Court of Appeals rightly observed that the case presents a "very narrow issue" (J.S. at A1), namely, whether the State's alleged diversion to MAC of proceeds of the sales tax and stock transfer tax levied in New York City unconstitutionally impaired the rights of City bondholders.

On the way to this Court appellants broadened beyond recognition the issue they purport to present for adjudi-

---

* The law was most recently restated in *Wein* v. *City of New York,* 36 N Y 2d 610 (1975), where appellant Wein, suing as a City taxpayer, unsuccessfully challenged on a broad front of issues, re-played in appellants' Jurisdictional Statement, the validity of an act which was a precursor of the MAC statutes.

cation. Asserting that

> "the purchasers of New York City bonds relied upon the fiscal safeguards built into the 1938 State Constitution"

(J.S. 4), they have poured into the Jurisdictional Statement a storehouse of grievances against the State courts' consistent interpretations of the local finance provisions of the 1938 State Constitution, none of which was previously argued in this litigation.

In the State courts appellants argued as City bondholders that they had a contract right to the sales tax revenues. Here they argue that they had a contract right not to have the Legislature create a public corporation which allegedly violates a variety of constitutional provisions concerning, *e.g.*, the freedom of a public authority from the restrictions on municipal debt.

Clearly the appeal must be deemed limited by the record in the State courts. *McGoldrick* v. *Compagnie Generale*, 309 U.S. 430, 434-435 (1940).

(3)

Assuming Article III jurisdiction, summary affirmance is indicated as no substantial question under the Contract Clause is presented warranting plenary consideration by the Court.

A. The alleged contract never existed.

It is elementary that unless appellants can show they had contract rights which were infringed by the enactment of Chapters 168 and 169, it avails them not at all to show, if they can, that the City bondholders' risk of non-payment was increased by the creation of MAC.

The State court's opinion that appellants did not have the contract rights that they claim is entitled to be followed by this Court unless "manifestly wrong" and replete with

"obvious error." *Hale* v. *State Board*, 302 U.S. 95, 101 (1937); also, *Dodge* v. *Board of Education*, 302 U.S. 74, 79 (1937); *cf. Juidice* v. *Vail*, 97 S. Ct. 1211 (1977).

Moreover, the contract must be clearly, even "unequivocally", expressed before this Court will examine whether an unconstitutional impairment has occurred. *Keefe* v. *Clark*, 322 U.S. 393, 396-7 (1944).

The State court, after posing the question regarding the alleged diversion of tax revenues, examined Article VIII of the State Constitution, the State Constitutional provision relied on by appellants in their pleading,* and concluded from Article VIII and from its opinion in *Flushing Nat'l Bank* v. *MAC*, 40 N Y 2d 731 (1976), both what appellants' contract *was* and what it *was not*. In a unanimous *per curiam* opinion the court declared that

> "There is not, and never has been, an agreement, express or implied, that the revenues of these [sales and stock transfer] taxes be used to repay city bonds." J.S. at A1.

The court pointed out that City bondholders are protected by the City's constitutional pledge of full faith and credit, which it had recently interpreted in *Flushing Nat'l Bank* v. *MAC*, *supra*, 40 N Y 2d at 735, to constitute a double commitment: to pay the obligation punctually when due and to produce funds to make such payment; and that the bondholders are further protected by the constitutional mandate to exceed normal real estate tax limitations if necessary in order to raise sufficient funds to pay debt service. The Article VIII "first revenues" provision, the court said, whereby if a municipality fails to appropriate sufficient sums to pay debt service, the bondholders have a claim on the "first revenues thereafter received," does not give the bondholders the right to insist that any particular

---

* The complaint referred only to Article VIII § 2, *ante*.

existing taxes be maintained, but only assures that out of the revenues which are collected, money must be provided to satisfy obligations to the bondholders.

Appellants' contrary reading of the "first revenues" provision is not a natural reading of the text and is inconsistent with their contract as holders of full faith and credit, general obligation bonds. One looks in vain for an unequivocal expression of their alleged contractual rights in the sales and stock transfer tax revenues.

It is self-evident that an appeal under the Contract Clause must fail as the alleged contract did not exist.

B. There was no unconstitutional impairment in any event.

The question whether, if appellants had the contract they claim they had, the alleged impairment would be unconstitutional, merges into the question *ante* whether appellants can show a direct injury which gives them standing to invoke the jurisdiction of this Court.

For the MAC statutes have had both the purpose and effect of strengthening the position of the City's bondholders, including appellants. As we have noted, while certain tax receipts are subject to being appropriated for MAC's corporate purposes, MAC has poured into the City treasury over 4 billion dollars to date and even more important, MAC has been a lifeline to a City struggling for survival, while the alternative was almost surely a default on the bonds.

Thus the creation of MAC, far from impairing the City's bonds, helped to discharge the City's obligation on the bonds.

> "The necessity compelled by unexpected financial conditions to modify an original arrangement for discharging a city's debt is implied in every such obligation *for the very reason that thereby the obligation is discharged, not impaired.*"

Faitoute Co. v. *Asbury Park,* 316 U.S. 502, 511 (1942) (emphasis added), quoted with approval in *U.S. Trust Co. of New York* v. *New Jersey,* 97 S. Ct. 1505, 1521, 52 L. Ed. 2d 92, 113 (1977).

It is nothing short of outrageous distortion to suggest, as do appellants (J.S. 39-40), that the circumstances in this case bear any resemblance whatever to the facts in *Port of Mobile* v. *Watson,* 116 U.S. 289 (1885), where the legislature stripped the municipality bare of its revenues, leaving an empty cupboard for the bondholders. The alleged contract and its alleged impairment are simply a contrived attempt to bring to the Supreme Court appellants' losing battle with the State Court of Appeals over the meaning of the 1938 State constitutional provisions.

CONCLUSION

For the reasons stated, the appeal should be dismissed or the judgment should be affirmed.

Dated: New York, New York
August 31, 1977

Respectfully submitted,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Intervenor-Appellee
appearing pro se

SAMUEL A. HIRSHOWITZ
First Assistant Attorney General

SHIRLEY ADELSON SIEGEL
Assistant Attorney General
of Counsel

MOTION FILED
SEP 9 1977

IN THE

Supreme Court of the United States

October Term, 1977

No. 77-114

WILLIAM J. QUIRK and LEON E. WEIN,
Appellants,

against

MUNICIPAL ASSISTANCE CORPORATION FOR THE CITY OF NEW YORK and THE CITY OF NEW YORK,
Appellees,

and

LOUIS J. LEFKOWITZ,
Attorney General of the State of New York,
Intervenor-Appellee.

On Appeal from the Court of Appeals of the State of New York

MOTION FOR LEAVE TO FILE BRIEF AND BRIEF *AMICUS CURIAE* OF UNITED STATES TRUST COMPANY OF NEW YORK, AS TRUSTEE, IN SUPPORT OF MOTION BY APPELLEES TO DISMISS THE APPEAL FOR WANT OF A SUBSTANTIAL FEDERAL QUESTION OR TO AFFIRM

DEVEREUX MILBURN
RICHARD G. MCCLUNG
ROBERT A. MCTAMANEY
Attorneys for United States Trust Company of New York, as Trustee, Amicus Curiae
2 Wall Street
New York, New York 10005
(212) 732-3200

Of Counsel:
CARTER, LEDYARD & MILBURN

September 7, 1977

IN THE

Supreme Court of the United States

October Term, 1977

No. 77-114

WILLIAM J. QUIRK and LEON E. WEIN,
Appellants,

against

MUNICIPAL ASSISTANCE CORPORATION
FOR THE CITY OF NEW YORK and
THE CITY OF NEW YORK,
Appellees,

and

LOUIS J. LEFKOWITZ,
Attorney General of the State of New York,
Intervenor-Appellee.

On Appeal from the
Court of Appeals of the State of New York

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* OF UNITED STATES TRUST COMPANY OF NEW YORK, AS TRUSTEE, IN SUPPORT OF MOTION BY APPELLEES TO DISMISS THE APPEAL FOR WANT OF A SUBSTANTIAL FEDERAL QUESTION OR TO AFFIRM

United States Trust Company of New York, as Trustee, respectfully moves for leave to file the accompanying *amicus curiae* brief in support of the motion by appellee

Municipal Assistance Corporation For The City of New York ("MAC") to dismiss the appeal for want of a substantial federal question or, in the alternative, to affirm summarily the judgment of the Court of Appeals of the State of New York. The consent of counsel for appellees has been obtained. The consent of counsel for appellants was requested but refused.

The interest of the United States Trust Company in this case arises from the fact that the Trust Company is Trustee under MAC's First and Second General Bond Resolutions under which there have been issued over $4.3 billion of MAC bonds. The holders of such bonds will be directly and substantially affected by the ultimate outcome of this litigation.

United States Trust is confident that appellees will adequately present the case for the Court's consideration of the appeal. The Trust Company believes, however, that its position should be presented to the Court because of its responsibilities as Trustee under MAC's First and Second General Bond Resolutions and because of the Trust Company's belief that appellants have misread and misapplied the Court's decision in *United States Trust Company of New York* v. *New Jersey*, 431 U.S. 1 (1977), which the Trust Company prosecuted as plaintiff and appellant. Further, appellants say that the financial community looks to this case as a "crucial test" after the *United States Trust* case (Jurisdictional Statement 29). To the contrary, the only "financial community" attitude reflected by the Record is that eleven major New York City banks including *amicus* United States Trust—all of which banks hold MAC bonds

and most of which hold City bonds—appeared below as *amici* in support of the MAC legislation challenged here. For these reasons the Trust Company respectfully requests the Court to permit it to file the accompanying brief *amicus curiae*.

Respectfully submitted,

DEVEREUX MILBURN
RICHARD G. MCCLUNG
ROBERT A. MCTAMANEY
Attorneys for United States Trust Company of New York, as Trustee, Amicus Curiae
2 Wall Street
New York, New York 10005
(212) 732-3200

Of Counsel:
CARTER, LEDYARD & MILBURN

New York, New York
September 7, 1977

IN THE

Supreme Court of the United States

October Term, 1977

No. 77-114

WILLIAM J. QUIRK and LEON E. WEIN,
Appellants,

against

MUNICIPAL ASSISTANCE CORPORATION
FOR THE CITY OF NEW YORK and
THE CITY OF NEW YORK,
Appellees,

and

LOUIS J. LEFKOWITZ,
Attorney General of the State of New York,
Intervenor-Appellee.

On Appeal from the
Court of Appeals of the State of New York

BRIEF *AMICUS CURIAE* OF UNITED STATES TRUST COMPANY OF NEW YORK, AS TRUSTEE, IN SUPPORT OF MOTION BY APPELLEES TO DISMISS THE APPEAL FOR WANT OF A SUBSTANTIAL FEDERAL QUESTION OR TO AFFIRM

Appellants misread the Court's holding in *United States Trust Company of New York** v. *New Jersey*, 431 U.S. 1 (1977). See Jurisdictional Statement 20, 21. There the obligations of the Port Authority were revenue bonds secured by specific pledged revenues of the agency and not by any power to tax or any pledge of the credit of a State or municipal subdivision. Here, the City bonds are general obligations of The City of New York, secured by a pledge of the real estate tax (N.Y. Const., Art. VIII, §§2, 10, 12), but by no other specified revenues.

The initial inquiry with respect to an alleged unconstitutional impairment of contract is whether a constitutionally protected contract exists. *United States Trust, supra,* 431 U.S. at 17-18. Here neither sales nor stock transfer tax revenues were ever pledged in support of Appellants' obligations; their purported diversion does not offend any agreement with Appellants. The distinction is dispositive.

---

* *Amicus* United States Trust Company of New York is trustee under the First and Second General Bond Resolutions under which there have been issued over $4.3 billion of bonds of Appellee Municipal Assistance Corporation For The City of New York. Appellants say that the financial community looks to this case as a "crucial test" after the *United States Trust* case (Jurisdictional Statement 29). To the contrary, the only "financial community" attitude reflected by the Record is that eleven major New York City banks including *amicus* United States Trust—all of which banks hold MAC bonds and most of which hold City bonds—appeared below as *amici* in support of the MAC legislation challenged here.

The appeal should be dismissed or, alternatively, the judgment should be affirmed without further consideration.

Respectfully submitted,

DEVEREUX MILBURN
RICHARD G. MCCLUNG
ROBERT A. MCTAMANEY
Attorneys for United States Trust Company of New York, as Trustee, Amicus Curiae
2 Wall Street
New York, New York 10005
(212) 732-3200

Of Counsel:
CARTER, LEDYARD & MILBURN

New York, New York
September 7, 1977